March 8 1872
motion —
Baker —
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 355.

PETER MONGER, APPELLANT,

vs.

THOMAS SHIRLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

Dismissed No appeal

FILED OCTOBER 20, 1871.

March 9 1872
Dismissed
Cost Fees

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1 Transcript of the record and proceedings of a cause lately determined in the circuit court of the United States for the eastern district of Tennessee, wherein Thomas Shirley is complainant, and Peter Monger is defendant, viz:

Bond.

Know all men by these presents that we, Thomas Shirley and John Baxter, are jointly and severally held and firmly bound unto Peter Monger in the penal sum of two hundred & fifty dollars, to be void on condition that the said Thomas Shirley doth with effect prosecute an original bill for discovery and relief, this day filed against the said Peter Monger in the circuit court of the United States for the district of East Tennessee; otherwise to pay and satisfy all costs and damages that may be awarded for failure.

Witness our hands and seals this 27th day of March, 1868.

THOMAS SHIRLEY, [SEAL.]
By BAXTER, *His Atto.*
JNO. BAXTER, *Sec'ty.* [SEAL.]

Summons.

The President of the United States of America to the marshal of
2 the eastern district of Tennessee, greeting:

You are hereby commanded to summon Peter Monger, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the district of East Tennessee, at the court-house, in Knoxville, in said State, on the 3d Monday in May next, then and there to answer the bill of complaint filed in said court against him by Thomas Shirley. Herein fail not, and have you then and there this writ.

Witness the Honorable Salmon P. Chase, esq., Chief Justice of the Supreme Court of the United States, this the 4th Monday in November, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the

[L. S.] M. L. HALL, *Clerk.*

(Endorsed:) No. 209. Summons. Thomas Shirley vs. Peter Monger. This summons was issued on the 27th day of March, 1868. M. L. Hall, clerk.

Came to hand March 30, 1868; executed this writ, as com-
3 manded, on the 11th day of April, 1868, by summoning the within-named Peter Monger, and delivered to him a copy of the bill, April 11th, 1868.

J. H. PICKEL,
Dep't. U. S. M. East. Dist. of Tenn.

Bill.

[50 c. rev. stamp.]

To the honorable the judges of the circuit court of the United States, sitting as a court of equity, at Knoxville, Tennessee, in and for the eastern district of Tennessee:

The bill of complaint of Thomas Shirley, a citizen of the State of Georgia, against Peter Monger, a citizen of Hamilton County, Tennessee.

And now comes the said Thomas Shirley, and humbly complaining,

sheweth unto your honors that he was, and is yet, seized in fee-simple, and possessed of a valuable tract of land worth twenty thousand dollars, or more, containing about eight hundred acres, situated, laying, and being in Hamilton County, Tennessee, adjoining the lands of Sam'l Craighead, John B. King, & others, upon which he resided for more than twenty-five years; but, on or about the 25th of November, 1863, your orator, having been in sympathy with the rebellion then
4 pending, deemed it necessary to his personal safety to withdraw from his home, and fall back with the rebel army into the State of Georgia, where he domiciled himself and family, and where he has ever since remained, and of which State he is now a citizen. After your orator had withdrawn from Tennessee as aforesaid, the defendant, on or about the 15th December, 1863, fraudulently combined and confederated with three others to seize and appropriaie your orator's said tract of land to himself. And to enable him to accomplish this end, he and the three other persans, whose names are known to your orator—but he is advised it is not necessary to disclose them here—forged and counterfeited what purported to be a bill single executed by your orator, and payable to one John W. Westmoreland, three months' after its date, to wit, the 15th day of December, 1863, for the sum of ten thousand dollars. Upon this pretended bill single, so forged and counterfeited by them, they caused to be forged an assignment thereof to the defendant, Peter Monger; and thereupon he, in pursuance of their corrupt agreement to defraud your orator out of his said tract of land, and appropriate
5 it to the def't, on the 6th of June, 1864, commenced suit by attachment in the circuit court of Hamilton County, Tennessee, holden at Harrison; had your orator's land regularly attached by due process of law, and upon the return of said attachment and levy endorsed thereon, and subsequent proceeding had in the cause, said circuit court, at its October term, 1865, rendered a judgment against your orator, and in favor of defendant Peter Monger, for the sum of eleven thousand five hundred and fifty dollars and the costs of the suit; and, upon the judgment so rendered, a venditioni exponas was issued, directing and commanding the sheriff of Hamilton County to sell the lands attached as aforesaid, which was done; and at the sale so made, on the 1st January, 1866, the defendant, Peter Monger, became the purchaser thereof at the price of ten thousand five hundred dollars, as will more fully and at large appear from a copy of the record in said cause, which complainant will file as evidence before the hearing.

Now, your orator charges that he never knew any man by the name of John W. Westmoreland; that he never executed himself, or
6 authorized any one else to execute for him, said alleged bill single; if such bill single existed at all it was without consideration, and was forged and counterfeited in manner aforesaid; and that the assignment thereon from the pretended and fictitions obligee to defendant was forged and counterfeited without any consideration, and not made in due course of trade.

Complainant charges that, after careful inquiry, he has been unable to find, or even to hear of, any man by the name of John W. Westmoreland, and he believes and charges no such man exists; that the name was used by the parties as a fiction to enable them to carry out their villainous scheme. And as a further means of consummating his fraudulent purpose of seizing and appropriating your orator's land, and of covering up or destroying the evidence of the same, the defendant with-'eld from the files of his attachment suit in the circuit court said pretended bill single, or afterwards by himself, or by some one in his

interest, surreptitiously abstracted it from the clerk's office, so that complainant, and those acquainted with his handwriting, cannot have access to it for the purpose of proving it a forgery. And in furtherance of their corrupt and fraudulent designs upon your orator's property as aforesaid, the defendant resorted to the following stratagem:

On the 11th October, 1864, he caused and procured an information to be filed by the district attorney of the United States for this district against your orator's said land, praying that the same be condemned and confiscated to the use of the Government of the United States. The information so filed was brought on to a hearing, a judgment of condemnation of your orator's life-estate therein was rendered, a sale of said interest made thereof on the 24th April, 1865, to def't, Monger, at seven hundred dollars. But at a subsequent term of said court, January, 1866, the defendant, Monger, by leave of the court, intervened in said cause, and, by his claim and answer, set forth and alleged that he was the owner of said land; that he had acquired the title through his purchase at sheriff's sale, as is hereinbefore stated, and prayed the court to decree to him the amount which he had bid at the marshal's sale of your orator's life-estate in said premises; and, upon consideration of his said claim and answer, the amount so bid by him, except a sum sufficient to pay the costs of said cause, was decreed to said defendant.

The facts in relation to this matter will more fully appear from the record of the cause which complainant will, by leave of this honorable court, file as evidence in this cause.

Notwithstanding the facts as above recited, and that there was no decree of the said district court of the United States confirming said sale made by the marshal of complainant's life-estate to defendant, Monger, your orator understands, and upon this information charges, that the defendant, Monger, has obtained a deed from the marshal for said premises, and that he has caused the same to be duly registered.

Whether due and legal notice by publication was given as required by law in the attachment and confiscation suits aforesaid, or not, complainant is not advised; but, if any such notices were given, your orator insists that, under the facts herein charged, the same cannot operate to divest him of his property, and to pass the same to defendant. Both of said suits originated in fraud, prosecuted by false suggestions, and the judgments rendered therein obtained through the fraud and imposition of said defendant and his confederates upon said courts at a time when your orator was cut off from all means of communication with the parties concerned, and with the courts in which said proceedings were had. And complainant here avers that he had no notice whatever of the institution or pendency of said suits, or either of them, or of the judgments rendered or sales made in pursuance thereof, or of the claim of title asserted by def't to said lands until about March 1867, and that the same is, and was intended to be from the beginning, a fraud upon the rights of your orator.

Your orator further charges that, under his claim of title, acquired as aforesaid, the defendant, Monger, has, through tenants and by himself, entered upon and occupied and enjoyed your orator's land aforesaid for three years past; that he has done and permitted waste thereon; that, in consequence of the obnoxious character of one Joseph Richie, whom def't placed in possession of said land, a large and valuable dwelling-house and other improvements thereon were burnt down and destroyed; that the rents and profits of said farm

were worth two thousand dollars per annum, which, in connection with the damages sustained by complainant from waste, the burning of his house and improvements aforesaid, amount to the sum of fifteen thousand dollars, for all which complainant insists that he is entitled to an account and a decree over against said defendant.

Being remidless in the premises according to the third rule of the common law, your orator prays your honors to cause the defendant, Peter Monger, to be made a party def't to this bill, by subpœna duly served, requiring him personally to be and appear before this honorable court at the next term thereof, to be holden at Knoxville, on the 3rd Monday of May next, and then and there answer the same according to law and the rules and practice of this honorable court. And may it please your honors to require said defendant to answer and state specifically who John W. Westmoreland is; where he lived, and what business he
11 was engaged in, and where he now lives; who were witnesses, if any, to said pretended bill single; what said bill single was executed for, when and where it was signed and delivered, and in whose presence; by whom, and in what language the indorsement on said note to def't was made; when, where, and for what consideration was said indorsement made. And may it please your honor to require defendant to give the name, age, size, and description of the party from whom he purchased said bill single, and who pretended to endorse it to him; when and where said indorsement was made; and if said indorsement was attested by any one, who it was attested by, and where the witness can now be found; what said Monger paid for said bill single, what it was paid in, when, where, and in whose presence it was paid; where he got the means of paying for it, who from, and when; where said note now is; and, if in his possession, to produce the same to the court; was it ever filed with the clerk of the circuit court at Harrison; if it was, who took it from the files.

And upon the coming in of defendant's answer, your orator
12 prays for the appointment of a receiver to receive and keep the rents and annual profits of said land till the termination of this suit, or until the further order of this court; that the colourable and fraudulent title of defendant to said land be removed; that the defendant be held to account with and pay to your orator the value of rents and damages as aforesaid; that all necessary accounts be taken to ascertain the same; that complainant have a decree therefor; and if your orator has misconceived his remedy in anything, he prays for all such further and other and general relief in the premises as the facts of the case may entitle him to.

And, as in duty bound, he will ever pray, &c.

EDWARDS & McELRATH, &
BAXTER, CHAMPION & RICKS,
Solicitors for Compl't.

Endorsed;) 209. Tho's Shirley vs. Peter Monger. Or. bill. Filed March 27, 1868. M. L. Hall, clerk.

Transcript from circuit court of Hamilton Co.

STATE OF TENNESSEE:

Pleas at the court-house in the town of Harrison, county of Hamilton, and State aforesaid, on the first Monday, being the third day,
13 of October, in the year of our Lord one thousand eight hundred and sixty-four, and in the 89th year of the independence

of the United States—present, the Honorable John C. Gant, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the courts of the fourth judicial circuit, in said State.

In the circuit court of Hamilton County, Tenn.

PETER MONGER
vs.
THOMAS SHIRLEY.

STATE OF TENNESSEE,
Hamilton County:

On this day personally appeared before me, C. W. Vinson, clerk of the circuit court of Hamilton County, Peter Monger, and made oath in due form of law that Thomas Shirley is justly indebted or liable to him as assignee in the sum of ten thousand dollars and the interest thereon, and that the said Thomas Shirley has so removed and absconded himself, or is absconding or removing himself or property beyond the limits of the State of Tennessee, that the ordinary process of law cannot be served on him.

PETER MONGER.

Sworn to & subscribed before me, June 6th, 1864.
C. W. VINSON, *Clerk.*

14 Know all men by these presents that we, Peter Monger and H. C. Alexander, all of the county of Hamilton, and State of Tennessee, are held and firmly bound unto Thomas Shirley in the sum of twenty-five thousand dollars; for the faithful payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, & administrators, jointly and severally, firmly by these presents, signed with our names, and sealed with our seals, and dated this 6th June, 1864.

The condition of the above bond is such, that whereas the above-bounden Peter Monger hath, the day of the date hereof, prayed an attachment against the estate of the said Thomas Shirley, at the suit of Peter Monger as assignee against Thomas Shirley, and hath obtained the same returnable to the circuit court of Hamilton County, for the sum of ten thousand dollars and interest:

Now, if the said Peter Monger shall well and truly prosecute his said suit with effect, or, in case of failure therein, shall well and truly pay and satisfy the said Thomas Shirley all such costs and damages as may be awarded and recovered against him in this or any suit which
15 may be brought against him for wrongfully suing out said attachment, then the above bond to be void; otherwise to remain in full force and effect.

Given under our hands and seals this June 6th, 1865.

PETER MONGER. [SEAL.]
H. C. ALEXANDER. [SEAL.]

Attest:
C. W. VINSON, *Clerk.*

STATE OF TENNESSEE, *Hamilton County:*

To the sheriff of Hamilton County, greeting:

Peter Monger, having complained on oath before me, C. W. Vinson, clerk of the circuit court of Hamilton County, that Thomas Shirley is

justly liable or indebted to him, as assignee, in the sum of ten thousand dollars and the interest thereon, and oath having also been made that the said Thomas Shirley has so absconded and removed himself, or is so absconding, concealing, or removing himself or his property beyond the limits of the State of Tennesse, that the ordinary process of law cannot be served on him:

You are, therefore, hereby commanded to attach the estate of the said Thomas Shirley, or so much thereof, repleviable on security, as
16 will be of value sufficient to satisfy the said debt or liability and interest thereon, and costs according to the complaint; and such estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereon, to be had before the circuit court of Hamilton County, Tennessee, to be holden on the 3d day of October, 1864, or at such time and place as may be prescribed by law, when & where you shall make known to said court how you shall have executed this writ.

Witness C. W. Vinson, clerk of the circuit court of Hamilton County, Tennessee, June 6th, 1864.

C. W. VINSON, *Clerk.*

No. . Original attachment. Peter Monger vs. Thomas Shirley. Issued 6th June, 1864. Came to hand on the 6th day of June, 1864, and search made, and no personal property of the defendant to be found in my county; and I levied this attachment on one tract of land, seven hundred acres more or less, and known as the Shirley home place, and bounded as follows: On the east by J. B. King and Samuel Craighead, and on the north by Humphrey Padget and W. P. McDonald, on the west by W'm Housley and G. O. Cate, and on the south by
17 Peter Monger and G. O. Cate, in the county of Hamilton, & State of Tennessee, & returned this attachment as directed within this the 6th day of June, 1864, at one o'clock p. m.

G. W. RIDER, *Sheriff.*

Circuit court. June term, 1865.

STATE OF TENNESSEE, *Hamilton County:*

PETER MONGER, ASSIGNEE, &C.
vs.
THOMAS SHIRLEY.

The plaintiff sues the defendant on a bill single executed by him December the 15th, 1863, and payable three months after the date thereof, to me, John W. Westmoreland, and by him assigned to pl'ff on the 6th day of March, 1864, which bill single, with said assignment thereon, is here to the court shown, said bill single being for the sum of ten thousand dollars, the said amount of which bill single, with the accruing interest thereon, remains unpaid & due to the plaintiff.

A. G. WELCKER,
Pl'ff's Atto.

Circuit court. October term, 1864.

PETER MONGER, ASSIGNEE, &C.
vs.
THOMAS SHIRLY. } Attachment.

Came the plaintiff, by attorney, and, it appearing to the court that the

defendant is in court by attachment levied upon his land, and it
18 further appearing that publication has been made and notice given as required by law, it is therefore ordered by the court that final judgment in this cause be staid for six months.

Circuit court. October term, 1865.

PETER MONGER, ASSIGNEE, &C. *vs.* THOMAS SHIRLEY. } Attachment.

Came the plaintiff, by attorney, and the defendant being solemnly called to come into court, as he was this day bound to do, and make defence to the plaintiff's action in this cause, came not, but made default. And it appearing to the satisfaction of the court that, at the October term of this court, 1864, final judgment was staid in this cause for six months, publication having been made and notice given as required by law, requiring the defendant to appear at that term of the court; and it further appearing to the court that twelve months have transpired since the order was made in this cause staying the judgment for six months, and no defence having been made by the defendant:

It is therefore considered by the court that judgment by default be entered against the defendant, and that the plaintiff recover of
19 the defendant the sum of ten thousand dollars, the plaintiff's debt in the declaration mentioned, with the further sum of fifteen hundred & fifty dollars, the interest on the same to this date, making in all the sum of eleven thousand five hundred and fifty dollars, with all the costs in this cause, for which an execution may issue.

But it appearing to the court that this suit was brought by attachment issued by the clerk of this court on the 6th day of June, 1864, and came to the hands of George W. Rider, sheriff of said county, and was by him, on the 6th day of June, 1864, levied on the following described tract or parcel of land as the property of said defendant, to wit, seven hundred acres, more or less, and known as the Shirley home place, in the county of Hamilton, and State of Tennessee, and bounded as follows: On the east by J. B. King and Samnel Craighead, on the north by Humphrey Padget and W. P. McDonald, on the west by W'm Hously and George O. Cate, and on the south by Peter Monger and George O. Cate, and returned to this court: It is therefore ordered by the court that said lands be condemned to sale to satisfy the aforesaid judgment of eleven thousand five hundred and fifty dollars, and all the
20 costs in this cause for which an order of sale may issue, and that the issuance of the execution ordered in this cause be staid until said order of sale is returned.

Bill cost: Attachment, State tax	5 00
Clerk Vinson: Attachment, 100c.; bond, 50c.; 1 security, 25c.; entering bond, 25c.; affidavit, 25c.; docketing cause, 1 60c.; order for publication, 50c; 4 continuances, 25c.; 8 orders, 25c.; record, 2 00c.; judgment final, 75c.; bill cost, 50c.; copy cert., 50c.; enrolling cause, 3 00c.; this transcript, 3 00c	17 85
Sh'ff G. W. Rider: Levy	1 00
Debt & damages	11,550 00
Adv.: Ja's R. Hood, publication	5 00
Judgment, 3d October, 1865	$11,578 85

Order sale.

STATE OF TENNESSEE, *Hamilton County:*

To the sheriff of Hamilton County, greeting:

Whereas on the 3d day of Oct'r, 1865, in the circuit court for said county, Peter Monger recovered a judgment against Thomas Shirley for the sum of eleven thousand five hundred dollars, besides cost;
21 and whereas it appearing to the court that, on the 6th day of June, 1864, an attachment was issued in this cause, and came to the hands of George W. Rider, sheriff for said county, and was by him, on the 6th day of June, 1864, levied upon seven hundred acres of land, more or less, as the property of said defendant, and known as the Shirley home place, and bounded on the east by J. B. King and Samuel Craighead, on the north by Humphrey Padget & W. P. McDonald, on the west by W. Housley & Geo. O. Cate, and on the south by Peter Monger and George O. Cate, lying in Hamilton County, Tennessee. And afterwards, to wit, on the said 3d day of October, 1865, in the circuit court, holding for the county of Hamilton, said land was condemned and ordered to be sold, to satisfy said *justice* judgment, and cost, with the costs of this proceeding:

You are therefore hereby commanded to expose to sale, to the highest bidder, at the court-house door, in the town of Harrison, the aforesaid described lands, as the law directs, and have you the said money ready to render before our said court when sitting for the county of Hamilton, at the court-house in Harrison, the 1st Monday of Feb'y next. Herein fail not.

22 Witness Cha's W. Vinson, clerk of said court, at office in Harrison, the 1st Monday of Oct'r, 1865.

C. W. VINSON, *Clerk.*

(Endorsed:) No. . Order sale. Peter Monger vs. Thomas Shirley. Is'd 15th Nov'r, 1865.

Came to hand the same day issued; and, after advertising the within-described lands in the Chattanooga Daily Gazette, a newspaper published in the city of Chattanooga, Hamilton County, Tennessee, according to law, and giving the notice required by law, I did, on the first Monday and first day of January, 1866, expose to public sale, at the court-house door, in the town of Harrison, Hamilton County, Tenn., as the law directs, the within-described land, to the highest bidder. And, at said sale, Peter Monger became the purchaser of said lands at the price of ten thousand five hundred dollars, he being the highest and best bidder at said sale; said lands being sold to satisfy the within judgment—Peter Monger against Thomas Shirley—out of which proceeds of sale I have satisfied the costs & commissions, & the residue I credit upon the plaintiff's judgment and returned to office January 1, 1866.

G. W. RIDER,
Sheriff of Hamilton County, Tennessee.

23 STATE OF TENNESSEE, *Hamilton County:*

I, Cha's W. Vinson, clerk of the circuit court for the county of Hamilton, in the State of Tennessee, do hereby certify the foregoing and within to be a correct copy of the papers and proceedings had in the case of Peter Monger, assignee, &c., against Thomas Shirley, all which is on file or of record in said court.

Witness my hand and seal of office, at office in Harrison, the 2d January, 1866.

[SEAL.] C. W. VINSON, *Clerk.*

Transcript from U. S. district court.

Transcript of the record and proceedings of a cause lately determined in the United States district court for the eastern district of Tennessee, to wit:

Information.

THE UNITED STATES OF AMERICA:

In the district court of the United States for the district of East Tennessee, held at Knoxville, within the sixth circuit.

To the Hon. Connally F. Trigg, judge of said court:

The information of James P. Swann, attorney for the said
24 United States for the said district of East Tennessee, who comes in person and prosecutes for the United States, and on behalf of all persons concerned, and propounds and gives the said judge to understand and be informed that, or the 20th day of September, 1864, the revenue agent, John R. Henry, seized on land, in the county of Hamilton, in the district of East Tennessee, one tract of land lying in said district and county, adjoining the lands of John B. King, Sam'l Craighead, S. O. Cate, H. Padget, and William P. McDonald, containing about seven hundred acres, as the property of Thomas Shirley, and now held as forfeited to the United States, for the causes hereinafter stated.

First. For that heretofore, to wit, on the 16th of August, 1861, and on the 31st of March, 1863, in pursuance of the 5th section of an act of Congress, entitled "An act further to provide for the collection of duties on imports, and other purposes," approved on the 13th July, 1861, the President of the United States, by proclamation, amongst other things, did declare that the inhabitants of the States of
25 Tennessee, Arkansas, Alabama, Mississippi, Louisiana, Georgia, and other States were in a state of insurrection against the United States, and, on the 25th day of July, 1862, the President of the United States did, in pursuance of the 6th section of the act of Congress approved the 17th July, 1862, entitled "An act to suppress insurrection and to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," issued his other proclamation, proclaiming to and warning all persons within the scope and meaning of the said 6th section of said act, to cease their rebellion against the Government of the United States, and to return to their proper allegiance thereto, within sixty days from the said 25th July, 1862, on pain of forfeiture and seizure of their estates, as within and by the 6th section of said act is provided.

Secondly. The said Thomas Shirley had been, before the said 25th day of July, 1862, and has been ever since, and still is levying war,
26 and is now engaged in armed rebellion against the Government of the United States, and did not, before the expiration of sixty days from the said 25th July, 1862, cease his rebellion against the United States.

Thirdly. That the said Thomas Shirley, before the expiration of the sixty days from the said 25th July, 1862, was, and has ever since been, aiding and abetting those in armed rebellion against the United States.

Fourthly. The said Thomas Shirley has abandoned said property, and is away from the same in armed rebellion against the United States, and is, and has been, aiding and abetting those engaged in armed rebellion against the United States.

Fifthly. The said Thomas Shirley used said property, and kept the same to be used in aid of the rebellion against the form of the statutes in such case made and provided; whereby and by force of the
27 statutes in such case made and provided, the said tract of land became and was forfeited to the uses in said statutes specified.

The said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true. Wherefore he prays that process of law issue against the said property to enforce the forfeiture thereof; and that notice be given to all persons concerned in interest, to appear and show cause on a day named in the process why such forfeiture should not be decreed. He prays for all other relief.

JAMES P. SWANN,
United States Att'y for the Dist. of E. Tenn.

(Endorsed:) Information. No. 60. United States vs. One Tract of Land of Thomas Shirley. Filed October 10th, 1864. M. L. Hall, clerk.

Monition.

DISTRICT OF EAST TENNESSEE:

The President of the United States to the marshal of the district of East Tennessee, greeting:

Whereas an information hath been filed in the district court of the United States for the district of East Tennessee, on the 10th day
28 of October, in the year of our Lord one thousand eight hundred and sixty-four by James P. Swann, esquire, attorney of the United States for said district, on behalf of the United States of America, against One Tract of Land in Hamilton County, adjoining the lands of John B. King and others, containing about seven hundred acres, seized as the property of Thomas Shirley for reasons and causes in said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons, interested in the said tract of land, may be cited in general and special to answer the premises, and all due proceedings being had, that the said tract of land may, for the causes in said information mentioned, be condemned, and the proceeds thereof distributed according to law.

You are, therefore, hereby commanded to attach the said tract of land, and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all per-
29 sons, claiming the same, or knowing, or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed according to the prayer of the said information; that they be and appear before the said court to be held in and for the district of East Tennessee, on the 28th day of November next, at 10 o'clock in the forenoon of that day, if the same shall be a day of jurisdiction; else on the 1st day thereafter, then and there to interpose a claim for the same, and to make these allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Connally F. Trigg, judge of the said court, at Knoxville, in the district of East Tennessee, this 25th day of October, in the

year of our Lord eighteen hundred and sixty-four, and of our independence the eighty-ninth.

[SEAL.] M. L. HALL, *Clerk.*

(Endorsed:) Monition. No. 60. United States vs. One Tract of Land, in Hamilton County. Issued Oct. 25th, 1864. M. L. Hall, clerk.

30 Came to hand Oct. 25th, 1864. Executed this writ Nov. 2nd, 1864, by attaching the within-described property. No person, found claiming an interest therein, to whom I could deliver a copy of the monition. I have advertised concerning the same in Brownlow's Knoxville Whig, giving due notice, &c., as within commanded, and posted said advertisement on the court-house door in Knoxville, for the space of fourteen days, Nov. 28th, 1864.

B. McDANNEL,
U. S. Marshal, Dist. E. Tenn.

MONDAY MORNING, *December 26th*, 1864.

Present and presiding, the Hon. Connally F. Trigg, judge of the United States district court for the district of East Tennessee.

Judgment of condemnation.

UNITED STATES
vs.
ONE TRACT OF LAND IN HAMILTON CO., SEIZED as the property of Tho's Shirley. } Information. No. 60.

This day came the district attorney for the United States, and
31 with the assent of the court, enters a nolle prosequi in this case, as to the 5th count in the information, and thereupon the district attorney moved the court for a judgment by default in this case, and the information being read, and proclamation being made as the manner is, and no person appearing to interpose any claim to the tract of land mentioned in said information, and it appearing to the court that the notice, required by the rules and practice of this court, has been duly given and published, it is ordered that all persons interested in said tract of land be adjudged in default, and that said information be taken for confessed and heard ex-parte.

And thereupon this cause came on to be heard before the Hon. Connally F. Trigg, judge, &c., on this 26th day of December, 1864, upon the information, judgment pro-confesso, and proofs. And it appearing to the court that Thomas Shirley, the alleged owner of the tract of land mentioned in said information, has been, and is, levying war, and is engaged in armed rebellion against the Government of the United
32 States, and is engaged in aiding and abetting those in armed rebellion against the United States, and that he has abandoned said tract of land, as alleged in the information:

It is therefore considered by the court that tract of land aforesaid, seized in this case, be condemned as forfeited to the United States, for the causes alleged in said information, during the natural life of the said Thomas Shirley, the alleged owner thereof. And it is ordered that the marshal, after giving thirty days' notice of the time and place of sale, by publication in some newspaper published in this district, shall sell, at public sale, to the highest bidder for cash, at the court-house in Knoxville, all the right, title, and interest that the said Thomas Shirley has

to the said tract of land, for and during the full term of his natural life, for which purpose it is ordered that a venditioni exponas issue. And the marshal shall make return and report of sale to the next term of this court.

CONNALLY F. TRIGG,
U. S. District Judge.

33 *Venditioni exponas.*

DIST. OF EAST TENNESSEE.

The President of the United States of America to the marshal of the district of East Tennessee:

Whereas an information has been filed in the district court of the United States for the district of East Tennessee, at Knoxville, on the 10th day of October, in the year of our Lord 1864, by James P. Swann, esquire, attorney of the United States for the district aforesaid, on behalf of The United States of America, against One Tract of Land in Hamilton County, adjoining the lands of John B. King, Sam'l Craighead, S. O. Cate, and others, seized as the property of Tho's Shirley, and praying that the same may be condemned as forfeited, and the proceeds thereof distributed according to law; and whereas the said tract of land has been attached by the process issued out of the said district court in pursuance of the prayer of said information, and is now in custody by virtue thereof; and such proceedings have been thereupon had that, by the final sentence and decree of the said court in this case made
34 and pronounced on the 26th day of December, 1864, and the said tract of land was condemned as forfeited and ordered to be sold by you, the said marshal, at the court-house in Knoxville, for cash in hand, to the highest bidder, after giving thirty days' notice of the time, place, and terms of sale in some newspaper published in said district, and that you have the money arising from such sale, together with this writ, before our said court on the 3rd Monday of May next, and that you there pay the same to the clerk of this court.

Therefore you, the said marshal, are hereby commanded to cause the said tract of land and all the right and title of the said Thomas Shirley thereto during the term of his natural life to be sold at the place aforesaid, in the manner and form aforesaid, and that you pay the money arising from such sale to the clerk of our court, pursuant to the aforesaid order or decree, and have you then and there this writ.

Witness the Honorable Connally F. Trigg, judge of the said court, at Knoxville, in the said district, this 13th day of March, A. D. 1865,
35 and of our independence the 89th.

[SEAL.] M. L. HALL, *Clerk.*

(Endorsed:) No. 60. Venditioni exponas. United States vs. One Tract of Land. Issued March 13th, A. D. 1865. M. L. Hall, clerk.

Came to hand same day issued. Executed this writ by advertising, and selling at public sale, on the 24th of April, 1865, the within mentioned tract of land to Peter Monger, he being the highest and best bidder, for the sum of seven hundred dollars, which I have received from him, and which amount I have paid to the clerk of the court, as within commanded. May 15th, 1865.

B. McDANNEL,
U. S. Marshal for the Eastern District of Tenn.

Petition of Peter Monger.

District court of the United States, dist. of E. Tenn., within the sixth judicial circuit.

To the Hon. Connally F. Trigg, judge of said court:

Peter Monger, who is a citizen of Hamilton County, State of
36 Tenn., and resides within said district, begs leave to present this his petition, and shows to your honor that, under date of Oct. 10, 1864, James P. Swann, then the att'y of the United States for said district of East Tennessee, filed information No. 60 in said court in behalf of The United States against One Tract of Land seized by the revenue-aid agent, John R. Henry, Sep. 20th, 1864, as the property of Thomas Shirley, and described in said information as being one tract of land lying in Hamilton County, in the district of East Tennesssee, adjoining the lands of John B. King, Sam'l Craighead, S. O. Cate, H. Padget, and W'm P. McDonald, containing about 700 acres. Said Shirley was a warm sympathyzer with those engaged in the late rebellion against the United States, and went south with the armies of the so called Confederate States when they retired from Tennessee, and petitioner presumes and admits that said seizure was well founded for the reasons set forth in said information.

Petitioner further shows to the court that he holds a note on
37 said Shirley for ten thousand dollars, which was assigned to him by the payee, and he has a suit pending on said note against Shirley in the circuit court at Harrison, Hamilton County, Tennessee, the suit having been commenced by attachment and levy on the above-described tract of land. It is believed that the suit was commenced before the seizure of the land; but, not having a transcript at hand, the date of the note and suit cannot now be stated. The note was overdue when the suit was brought, & that was done before the late term of this court. It is further shown, that petitioner retained an att'y to appear for him at the late term of this court, and intervene or take such other steps as might be necessary to protect his interest and enable him to enforce his lien on said land in satisfaction of his debt. Petitioner lived some distance from the railroad, and his nearest postoffice twelve or fifteen miles off, and he was in very bad health, so that he could not give personal attention to the business, nor could he promptly communicate with his attorney; nor had he been able to obtain judgment on his note,
38 because no court had been held for the transaction of business, nor has he judgment now for the same reason. In view of these facts, as petitioner is advised and believes, A. G. Welcker, his said att'y, made an arrangement with the district attorney, by which it was agreed that no judgment of condemnation should be taken in said cause at the last term of this court, so that petitioner might intervene, and file his claim at the present term; but in the haste of business, and without any purpose to evade said agreement, as petitioner is advised and believes, the land was so condemned at the last term of the court, and the first intimation petitioner had of it was through the advertisement by the marshal of the sale of the lands. As the best course to be taken under the circumstances, in the opinion of petitioner, he attended the sale and purchased the life-estate of said Shirley in the land at the sum of seven hundred dollars, for which he holds the marshal's receipt, dated April 24th, 1865. The land has been much abused, and the principal improvements on it burnt down; nor is it believed that, if it were sold
39 free from the incumbrance of said life-estate, it would bring the

amount of said note and its accruing interest, for which judgment is expected to be obtained whenever court may be held at Hamilton, Tenn.

Petitioner has at all times been a true and loyal citizen of the United States; was so regarded by those who knew him, and, in consequence, has had to suffer much during the late rebellion.

In view of the premises petitioner asks that the decree of condemnation and sale of the land be set aside, the sum paid to the marshal be returned to petitioner, and that he be allowed to answer said information and file his claim in the cause. He asks for such other relief as he may be entitled to in the premises.

A. G. WELCKER,
Proctor for Petitioner.

DIST. OF EAST TENN.,
State of Tennessee, Knox County:

This day personally appeared A. G. Welcker, agent & proctor of the foregoing petitioner, before me, and made oath, in due form of law, that the facts stated in the above petition are true to the best of his
40 knowledge, information, & belief.

A. G. WELCKER.

Sworn to & subscribed before me, May 18th, 1865.

M. L. HALL, *Clerk.*

(Endorsed:) Information No. 60. Petition of Peter Monger. Filed May 19th, 1865. M. L. Hall, clerk.

FRIDAY MORNING, *May 19th*, 1865.

Present & presiding, the Honorable Connally F. Trigg, judge, &c.

UNITED STATES
vs.
ONE TRACT OF LAND, THO'S SHIRLEY, OWNER. } Information No. 60.

On motion of Peter Monger, and for sufficient cause shown to the court, he is permitted to file a claim and answer in this cause on his giving bond and security, as required by the rules of this court. And it is ordered by the court that the fund realized by the sale of the tract of land seized in this cause be retained in court until the further order of the court; and, by consent of parties, the said Peter Monger has until the next term of this court to file his answer and claim in
41 this cause.

CONNALLY F. TRIGG,
U. S. Dist. Judge, Dist. E. Tenn.

Bond of claimant.

District court of the United States for the dist. of East Tenn., at Knoxville, ss:

UNITED STATES OF AMERICA
versus } Information No. 60. Suit No.

Know all men by these presents that we, Peter Monger and A. G.

Welcker, are held and firmly bound to The United States of America, in the sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said United States; for the payment of which, well & truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 11th day of January, 1866.

Whereas an information has been filed in the district court of the United States of America, for the district of East Tennessee, at
42 Knoxville, on the 10th day of Oct., 1865, by James P. Swann, esquire, attorney of the United States for the district aforesaid, against One Tract of Land, more particularly specified in the information and monition in the above-entitled suit No. 60, for reasons and causes in said information mentioned, and praying that the same may be condemned as forfeited to the uses in said information specified. And whereas also a claim has been filed in said court by the said Peter Monger, as a judgment creditor and purchaser of said land, as the property of said Shirley, and asking to have the fund in court in this cause assigned to him:

Now, therefore, the condition of this obligation is such, that if the said Peter Monger and , or either of them, shall defend the prosecution thereof and respond the costs, in case the said Peter Monger shall not support his said claim, then this obligation to be void; otherwise to remain in full force and virtue.

PETER MONGER, [SEAL.]
By his att'y, A. G. WELCKER.
A. G. WELCKER. [SEAL.]

(Endorsed:) Information No. 60. Intervention bond of P. Monger.

43 *Claim and answer of Peter Monger.* answer

To the Honorable Connally F. Trigg, judge of the district court of the United States in and for the eastern district of Tennessee:

The petition of Peter Monger, a citizen of Hamilton County, Tennessee, and who resides within said district, humbly complaining, showeth unto your honor, that James P. Swann, att'y of the United States for said district, filed information No. 60, under date of Oct. 10th, 1864, in the honorable court for the purpose of confiscating a certain tract of land in said information described, which was seized as the property of one Thomas Shirley, and at the Nov. term, 1864, of this honorable court, it was condemned and ordered to be sold. And afterwards, the United States marshal for said district, acting under said order, sold said tract of land on April 24th, 1865, to your petitioner, that being the day advertised for such sale, at the sum of seven hundred dollars, which sum was then paid over and a receipt of the marshal taken therefor. By such purchase petitioner understood he was acquiring the life estate of said Thomas Shirley in said land, and that estate is stated to be the extent of the interest condemned & sold in the receipt. Said
44 receipt is filed herewith and prayed to be taken as a part of this petition.

It is further shown that, on June 6th, 1864, your petitioner commenced suit by attachment in the circuit court of Hamilton County, Tenn,, against said Thomas Shirley, and said attachment was levied on the aforesaid tract of land on the same day of its issuance by the sheriff of said county. This suit was commenced to recover the sum of ten thou-

sand dollars and interest thereon due to petitioner by a bill single, executed by said Thomas Shirley, Dec. 15th, 1863, and payable ten months after the date thereof, to one John W. Westmoreland, and by him assigned to your petitioner March 6th, 1864. Said suit was prosecuted to final judgment October 3rd, 1865, when said petitioner recovered a judgment of eleven thousand five hundred and fifty dollars debt and damages, with the costs of the cause, making in all, $11,578 85, and an order of sale was also awarded in the cause of said land. An order of sale duly issued and the lands were brought to sale on the 1st of January, 1866, when your petitioner became the purchaser at the sum of
45 ten thousand five hundred dollars. This sum will be credited properly on the judgment, less all costs, commissions, &c. A certified copy or transcript of said cause is herewith filed, and prayed to be taken as part of this petition.

It is also here shown and averred that all the proceedings and steps taken in said cause were regular and legal as petitioner is advised, and the claim and recovery of petitioner were just and proper; that the same had not been paid, or in any way satisfied, and that no other means were, or are now, known, out of which to make said judgment to petitioner, except said lands within this State; that said judgment & interest to date of sale was about $11,717 50, leaving due petitioner, some $1,217 50 and interest thereon from date of sale, besides costs, commissions, &c.

It is also shown to the hon. court that petitioner, during the pendency of his said suit, and after he had purchased said life-estate, but before he had obtained his said judgment—say about May 10th, 1865—filed an application in your honor's court, to be allowed to inter-
46 vene in this cause, and asking, among other things, to have the proceeds of said sale by the marshal suspended or retained under control of the court, until the present term of court, and that your petitioner should have permission to file his claim and answer in the cause at the present term.

Owing to the delay of the officers of State court in executing said order of sale, petitioner has, in part, delayed his present application in this cause; he was also induced to make such delay by the fact that, at an early day of the present term of your honor's court, all causes relative to confiscation of property were continued to the first of the present month.

It thus appears to the court that petitioner commenced his suit and had his attachment levied on said land long before it was proceeded against by the officers of the United States. It was attached by your petitioner January 6th, 1864. It was seized by the revenue aid agent Sept. 20th, 1864.

Your petitioner claims that by virtue of said attachment, levy, & judgment, he acquired a specific lien on said land for the satisfac-
47 tion of his judgment, and which this hon. court will respect and protect; that as the land was sold and brought less than said judgment and costs, he is entitled to receive, at the hands of this hon. court, the proceeds of the sale made by the marshal in this cause. Petitioner also states that said land was rented out during the past year by said revenue-aid agent before the sale by the marshal, and that said sale by the marshal was made before the crop of last year was actually planted. Said crop was worth from one to two hundred dollars. In the meantime said land is liable for State and county taxes as well as taxes to the General Government. Your petitioner asks of your honorable court, and in view of the premises, to decree him a title to the said life-

estate as well as the rents accruing on said lands from and after his said purchase at the marshal's sale; that this petition be treated and received as the claim and answer of your petitioner in this cause, as provided for in the order of court at the last May term; that the application and statements therein of petitioner at the said May
48 term, be received as part of this petition; that if said rents so accuring since petitioner made purchase at the marshal's sale, are not allowed him, the same be appropriated to the payment of said taxes and such other liabilities as may be resting on said lands, including the costs of this cause; the said sum of seven hundred dollars, received by the marshal, be decreed and paid to petitioner, as a satisfaction so far of the balance still due on the aforesaid judgment of petitioner against Thomas Shirley. The hon. court is also asked for all other orders, decrees, and relief, to which he may be entitled in the premises, &c.

Your petitioner here begs leave to add and aver that he is true and loyal to the Government and laws of the United States, and has been so at all times. He further admits that said Thomas Shirley has been regarded as a rebel, who fled from the State and has remained abroad ever since the troops of the United States first entered and obtained control of East Tennessee.

A. G. WELCKER,
Proctor, &c.

49 DIST. OF EAST TENN.,
State of Tennessee, Bradley County:

This day personally appeared Peter Monger, before me, and made oath, in due form of law, that the facts stated in this, his petition, are true, to the best of his knowledge, information & belief.

PETER MONGER.

[Revenue stamp.]

Sworn to & subscribed before me, January 6th, 1866.

J. M. SMITH,
J. P. for B. C.

STATE OF TENNESSEE,
Bradley County:

I, Joseph H. Davis, clerk of the county court of said county, do hereby certify that J. M. Smith, whose genuine signature appears to the foregoing affidavit, is, and was at the time of signing the same, a justice of the peace in and for said county, duly elected, commissioned, and qualified as such, and authorized to administer oaths, and that all his official acts are entitled to full faith and credit.

Witness my hand and official seal this 6th day of January, 1866.

[SEAL.] JOSEPH H. DAVIS, *Clerk.*

50 The bill single, given by Thomas Shirley for $10,000, on the 15th day of December, 1863, to one John W. Westmoreland, and by said Westmoreland transferred to Peter Monger, is out of the files and can no where be found.

"THE CLERK."

Transcript from the circuit court of Hamilton County.

STATE OF TENN.:

Pleas at the court-house, in the town of Harrison, county of Hamilton, and State aforesaid, on the first Monday, being the third day of Oct., in the year of our Lord one thousand eight hundred and sixty-four, and in the 89th year of the independence of the United States—present, the Hon. John C. Gant, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the courts of the fourth judicial circuit in said State.

In the circuit court of Hamilton County, Tennessee.

PETER MONGER }
vs. }
THO'S SHIRLEY. }

STATE OF TENNESSEE,
Hamilton County:

On this day personally appeared before me, C. W. Vinson, clerk of the circuit court of Hamilton County, Peter Monger, and made
51 oath in due form of law, that Thomas Shirley is justly indebted or liable to him, as assignee, in the sum of ten thousand dollars, and the interest thereon; and that the said Thomas Shirley has so removed and absconded himself, or is absconding or removing himself or property, beyond the limits of the State of Tennessee, that the ordinary process of law cannot be served upon him.

PETER MONGER.

Sworn to & subscribed before me, June 6th, 1864.

C. W. VINSON, *Clerk.*

Prosecution bond.

Know all men by these presents that we, Peter Monger and H. C. Alexander, all of the county of Hamilton and State of Tennessee, are held and firmly bound unto Thomas Shirley in the sum of twenty-five thousand dollars; for the faithful payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, signed with our names, and sealed with our seals, and dated this 6th day of June, 1864.

The condition of the above bond is such that whereas the above-
52 bounden Peter Monger hath, the day of the date hereof, prayed an attachment against the estate of the said Thomas Shirley, at the suit of Peter Monger, as assignee, against Thomas Shirley, and hath obtained the same, returnable to the circuit court of Hamilton County, for the sum of ten thousand dollars and interest:

Now, if the said Peter Monger shall prosecute his said suit with effect, or, in case of failure therein, shall well and truly satisfy and pay the said Thomas Shirley, all such costs and damages as may be awarded and recovered against him in this or any suit which may be brought against him for wrongfully suing out said attachment, then the above bond to be void; otherwise to remain in full force and effect.

Given under our hands and seals this June 6th, 1865.

PETER MONGER. [SEAL.]
H. C. ALEXANDER. [SEAL.]

Attest:
C. W. VINSON, *Clerk.*

STATE OF TENNESSEE,
Hamilton County:

To the sheriff of Hamilton County, greeting:

53 Peter Monger, having complained on oath, before me, C. W. Vinson, clerk of the circuit court of Hamilton County, that Thomas Shirley is justly liable or indebted to him, as assignee, in the sum of ten thousand dollars, and the interest thereon. And oath having also been made that the said Thomas Shirley has so absconded and removed himself, or is so absconding, concealing, or removing himself or his property beyond the limits of the State of Tennessee, that the ordinary process of law cannot be served upon him.

You are therefore hereby commanded to attach the estate of the said Thomas Shirley, or so much thereof repleviable on security as will be of value sufficient to satisfy the said debt or liability, and interest thereon, and costs according to the complaint. And such estate, so attached, in your hands to secure or so to provide that the same may be liable to further proceedings thereon, to be had before the circuit court of Hamilton County, Tennessee, to be holden on the 3rd day of October, 1864,

54 or at such time and place as may be prescribed by law. When and where you shall make known to said court how you shall have executed this writ.

Witness C. W. Vinson, clerk of the circuit court of Hamilton County, Tennessee, June 6th, 1864.

C. W. VINSON, *Clerk.*

(Endorsed:) No. . Original attachment. Peter Monger vs. Thomas Shirley. Issued June 6th, 1864.

Came to hand on the 6th day of June, 1864, and search made, and no personal property of the defendant to be found in my county, and I levied this attachment on one tract of land, seven hundred acres, more or less, and known as the Shirley home place, and bounded as follows: On the east, by J. B. King and Sam'l Craighead; on the north, by Humphrey Padget and W. P. McDonald; on the west, by W'm Housley and G. O. Cate, in the county of Hamilton, and State of Tennessee, and returned this attachment as directed within. This the 6th day of June, 1864, at one o'clock, p. m.

G. W. RIDER, *Sheriff.*

STATE OF TENNESSEE,
Hamilton County:

Circuit court. June term, 1865.

55 PETER MONGER, ASSIGNEE, &C., }
vs.
THOMAS SHIRLEY. }

The plaintiff sues the defendant on a bill single, executed by him on the 15th of Dec., 1863, and payable ten months after the date thereof

to one John W. Westmoreland, and by him assigned to plaintiff, on the 6th day of March, 1864, which bill single, with said assignment thereon, is here to the court shown, said bill single being for the sum of ten thousand dollars, the amount of which bill single, with the accruing interest thereon, remains unpaid and due to the plaintiff.

A. G. WELCKER,
Att'y for Pl'ff.

Circuit court. Oct. term, 1864.

PETER MONGER, ASSIGNEE, &C., *vs.* THOMAS SHIRLEY. } Attachment.

Came the plaintiff, by attorney, and it appearing to the court that the defendant is in court by attachment levied upon his land, and it further appearing that publication has been made, and notice given, as required by law, it is therefore ordered by the court that final judgment
56 in this cause be staid for six months.

Circuit court. October term, 1865.

PETER MONGER, ASSIGNEE, &C., *vs.* THOMAS SHIRLEY. } Attachment.

Came the plaintiff, by att'y, & the defendant being solemnly called to come into court, as he was this day bound to do, and make defence to the plaintiff's action in this cause, came not, but made default. And it appearing to the satisfaction of the court that, at the Oct. term of this court, 1864, final judgment was staid in this cause for six months, publication having been made, and notice given, as required by law, requiring the defendant to appear at that term of the court; and it further appearing to the court that twelve months have transpired since the order was made in this cause staying the judgment for six months, and no defence having been made by the defendant:

It is therefore considered by the court that judgment by default be entered against the defendant, and that the plaintiff recover of
57 the defendant the sum of ten thousand dollars, the plaintiff's debt in the declaration mentioned, with the further sum of fifteen hundred and fifty dollars, the interest on the same to this date, making in all the sum of eleven thousand five hundred and fifty dollars, with all the costs in this cause, for which execution may issue. But it appearing to the court that this suit was brought by attachment, issued by the clerk of this court, on the 6th day of June, 1864, and came to the hands of George W. Rider, sheriff of said county, and was by him, on the 6th day of June, 1864, levied upon the following-described tract or parcel of land, as the property of said defendant, to wit: Seven hundred acres more or less, and known as the Shirley home place, in the county of Hamilton, and State of Tennessee, and bounded as follows: On the east, by J. B. King and Sam'l Craighead; on the north, by Humphrey Padget and W. P. McDonald; on the west, by William Houseley and George O. Cate; and on the south, by Peter Monger and George O. Cate, and returnable to this court. It is therefore ordered by the court that said lands be condemned to sale, to satisfy the aforesaid judgment
58 of eleven thousand five hundred and fifty dollars, and all the

costs in this cause, for which an order of sale may issue, and that the issuance of the execution in this cause be staid until said order of sale is returned.

Bill of costs.

Clerk Vinson: Attachment, 1 00; bond, 50c. 1 security, 25c.; entering bond, 25c.; affidavit, 20c.; docketing cause, 1 60; order for publication, 50c.; 4 continuances, 25c.; 8 orders, 25c.; record, 2 50; judgment, final, 15c.; bill of cost, 50c.; copy costs, 50c.; enrolling cause, 3 00; transcript, 3 00	17 85
State tax	5 00
Sheriff G. W. Rider, levy	1 00
Debt & damages	$11,550 00
Adv'r, Ja's R. Hood, publication	5 00
	11,578 85

Judgment 3rd October, 1865.

Order of sale.

STATE OF TENNESSEE, *Hamilton County:*

To the sheriff of Hamilton County, greeting:

Whereas, on the 3rd day of Oct., 1865, in the circuit court for
59 said county, Peter Monger recovered a judgment against Thomas Shirley for the sum of eleven thousand five hundred dollars, besides costs; and whereas, it appearing to the court that, on the 6th day of June, 1864, an attachment was issued in this cause, and came to the hands of George W. Rider, sheriff for said county, and was by him, on the 6th day of June, 1864, levied upon seven hundred acres of land, more or less, as the property of said defendant, and known as the Shirley home place, and bounded on the east by J. B. King and Samuel Craighead; on the north, by Humphrey Padget and W. P. McDonald; on the west, by Wm. Houseley and G. O. Cate, and on the south, by Peter Monger and G. O. Cate, lying in Hamilton County, Tennessee. And afterwards, to wit, on the said 3rd day of Oct., 1865, in the circuit court holding for the county of Hamilton, said land was condemned and ordered to be sold to satisfy said justice, judgment, and costs, with the costs of these proceedings.

You are therefore, hereby commanded to expose to sale to the highest bidder, at the court-house door, in the town of Harrison, the
60 aforesaid described land, as the law directs, and have you the said money ready to render before our said court, when sitting for the county of Hamilton, at the court-house in Harrison, the 1st Monday of February next. Herein fail not.

Witness Cha's W. Vinson, clerk of said court, at office in Harrison, the 1st Monday of Oct., 1865.

C. W. VINSON, *Clerk.*

(Endorsed:) No. . Order of sale. Peter Monger vs. Tho's. Shirley. Issued 15th of November, 1865.

Came to hand the same day issued; and after advertising the within-

described land in the Chattanooga Daily Gazette, a newspaper published in the city of Chattanooga, Hamilton County, Tennessee, according to law, and giving the notice required by law. I did, on the 1st Monday and first day of January, 1866, expose to public sale, at the court-house door, in the town of Harrison, Hamilton County, Tennessee, as the law directs, the within described land to the highest bidder. And at said sale Peter Monger became the purchaser of said land at the price
61 of ten thousand five hundred dollars, he being the highest and best bidder at said sale, said land being sold to satisfy the within judgment, Peter Monger vs. Thomas Shirley, out of which proceeds of sale I have satisfied the costs and commissions, and the residue, I credit upon the plaintiff's judgment, and returned to office January 1st, 1866.

G. W. RIDER,
Sheriff of Hamilton County, Tennessee.

STATE OF TENNESSEE, *Hamilton County:*

I, Cha's W. Vinson, clerk of the circuit court for the county of Hamilton, in the State of Tennessee, do hereby certify the foregoing and within to be a correct copy of the papers and proceedings had in the case of Peter Monger vs. Thomas Shirley; all of which is on file or of record in said court.

Witness my hand and the seal of office, in Harrison, the 2d of January, 1866.

[SEAL.] C. W. VINSON, *Clerk.*

FRIDAY MORNING, *January 12th, A. D.* 1866.

62 Present and presiding, the Hon. Connally F. Trigg, judge of the United States district court for the district of East Tenn.

UNITED STATES
vs.
ONE TRACT OF LAND, SEIZED AS THE PROPERTY of Tho's Shirley. } Information No. 60.

Be it remembered that this cause came on to be finally heard and determined on this 12th day of January, 1866, before the Hon. Connolly F. Trigg, judge, &c., a trial by jury being waived. Upon the information and the other proceedings in the cause, and the claim and answer of Peter Monger, and the proofs; from all which it appears to the court, that the tract of land mentioned and described in the information, had been condemned and sold under a decree of this court, before the last term thereof, and that said Monger became the purchaser, at the sum of seven hundred dollars; that before said sale was confirmed, the purchaser applied to the court for leave to intervene, and by such application showed merits and assigned good reasons for his failure to intervene before that time; whereupon the court is pleased to order
63 that he be allowed to intervene and file his claim and answer, at the present term, and apply for the proceeds of said sale. And it appearing that the claim and answer of said Peter Monger has been filed accordingly that he attached said land before it was seized in this cause, by process from the circuit court of Hamilton County, Tennessee; that he prosecuted said suit to final judgment, and caused said land to be sold thereunder, on January 1st, 1866, at which sale he became the purchaser, at the sum of ten thousand five hundred dollars, leaving a balance still due him largely over the balance of said seven

hundred dollars now in court; after paying off the costs of this cause, as assessed at the last term of this court, which were as follows, to wit: To J. R. Swan, the former dist. att'y., $2500; to C. W. Hall, the present dist. att'y., $15 00; to the clerk, M. L. Hall, $2500; and to the marshal B. McDannel, $35 00.

It is therefore ordered, adjudged, and decreed by the court that said Peter Monger is entitled to the fund now in the registry of this court, being five hundred and eighty dollars, and the same is ordered to
64 be paid to him, or his proctor; which sum was accordingly paid by the clerk to A. G. Welcker, proctor of said Peter Monger, and his receipt taken for the same, at No. 60, on the appearance docket of this court.

It is further ordered that the marshal execute a deed to the said Peter Monger for the life-interest of the said Thomas Shirley in the land mentioned in the information, and sold by him under a former decree of this court.

CONNALLY F. TRIGG,
U. S. Dist. Judge.

65 *Appearance and judgment docket.*

No.	Parties.	Action, &c.	Att'y, &c.	"Date."	"Proceedings."
60	United States *vs.* One Tract of Land in Hamilton Co., adjoining the lands of J. B. King et al., containing 700 acres, seized as the property of Thomas Shirley.	Information	J. P. Swann.	1864, Oct. 10th " " 24	Information filed. Monition & copy issued.

Came to hand Oct. 25th, 1864. Executed this Nov. 2d, 1864, by attaching described property. No person found claiming an interest therein to whom I could deliver a copy of the monition. I have advertised concerning the same in Brownlow's Knoxville Whig, giving due notice &c., as within commanded, and posted said advertisement on the court-house door in Knoxville, for the space of 14 days.
Nov. 28th, 1864.

B. McDANNEL,
U. S. Marshal District East Tennessee.

1866, Jan. 12th. Rec'd of M. L. Hall, clerk, five hundred and eighty dollars. Allowed by order of court to Peter Monger on his intervention in this case.

A. G. WELCKER,
Att'y for said Monger.

I, J. C. J. Williams, clerk of the United States district court
66 for the district of East Tennessee, do hereby certify that the foregoing is a true and perfect copy of all the original papers now on file in my office, as well as all the proceedings that are of record in this cause.

[SEAL.] Witness my hand and official seal, at office in Knoxville, Tenn., this July 27th, 1871.

J. C. J. WILLIAMS, *Clerk.*

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67 (Endorsed:) No. 209. Transcript from the district court of the United States for the eastern district of Tennessee, in Thomas Shirley vs. Peter Monger. Filed July 27th, 1871. H. M. Aiken, clerk.

Answer of Peter Monger.

The answer of Peter Monger to the bill filed against him in the circuit court of the United States for the district of East Tennessee, by Thomas Shirley:

This respondent, saving all the usual exceptions to complainant's bill, and not waiving the benefit of a demurrer, as hereinafter insisted on, for answer to so much thereof as he is advised it is material for him to answer, says that it is true that complainant was seized in fee, and was possessed of the tract of land described in the bill; that said tract of land is of considerable value, but not of that stated in the bill; but respondent denies that complainant now has any title to said tract of land. It is true that complainant sympathized with the rebellion,

68 and not far from the date alleged in the bill, and upon the approach of the Federal Armies, complainant, for personal safety, or other reasons, fled from and abandoned and absconded from his property and family, and fell back with rebel army, to what point respondent does not know. It may have been in Georgia. After some time his family followed him, and complainant has never returned to his old neighborhood, took any control of, or made claim to the possession of said land until about the commencement of this suit.

It is not true that respondent, on or about the 15th December, 1863, or at any other time, fraudulently combined or confederated with three others, or any other number, to seize and appropriate said tract of land. Respondent positively denies that he, or that he and three other persons, or any other number or person, forged and counterfeited a bill single, or what purported to be a bill single, executed by complainant, and payable to the person at the time and bearing date as alleged in complainant's bill, and for the sum of ten thousand dollars; or any other note, bill single, or other paper.

69 It is not true that respondent, or respondent and others, forged, or caused to be forged, an assignment of such bill single, or other paper of any kind, to respondent, or any one else. All the charges in the bill in reference to the fraudulent combination, confederation, for-

geries, and counterfeiting are untrue in every particular, as well as that suit was in pursuance of such agreement and fraud brought as alleged. It is true that respondent was the bona-fide holder and owner of a bill single of complainant to John W. Westmoreland for ten thousand dollars, executed and bearing date December 15, 1863, at three months; that said note was lawfully and in good faith assigned to respondent on the 6th day of March, 1864, and before said bill single was due; that, on the 6th day of June, 1864, respondent commenced, by attachment, suit against complainant upon said bill single, in the circuit court of Hamilton County, Tennessee, under which the lands mentioned in the bill were regularly attached by due process of law; that, after the return of said attachment, with the levy endorsed thereon, and, under subsequent and regular proceedings had in the cause, said circuit
70 court, at its October term, 1865, rendered a judgment in favor of respondent against complainant for the amount alleged in the bill, and for costs of suit; and that thereupon a venditioni exponas was issued to the sheriff for the sale of the lands attached; that the lands were sold under the same on the 1st of January, 1866, and respondent became the purchaser under this sale at the price alleged.

Respondent denies that complainant never knew a man by the name of John W. Westmoreland. Respondent denies the allegation in the bill that complainant never executed said bill single. Respondent knew nothing of the consideration of the note, nor has he ever known, nor does he now know, what it was. Respondent believed when he purchased the bill single, and still believes, that it was genuine and executed by complainant, upon sufficient consideration, in due course of trade. Respondent denies that the note was without consideration or forged and counterfeited. He denies that the assignment was from a pretended and fictitious obligee, or was forged and counterfeited, or without consideration. Whether in due course of trade is a matter submitted
71 to the court under the facts to be hereinafter detailed. But respondent insists that complainant has no right to inquire into the consideration of the assignment, or whether the transfer was made to respondent in due course of trade—only for the purpose of inquiring into the equities between complainant and the original holder or payee; that, as between complainant and respondent, it makes no difference what the consideration for the transfer of the note was, and respondent begs leave to rely on this as by demurrer.

Respondent knows nothing about what inquiries, and with what success, complainant has made for John W. Westmoreland, but respondent has no doubt but that complainant executed the bill single, and that he knows when and how and to whom he executed it, whether he knows his present place of residence or not, or whether he lives or not. Respondent denies that the name was used by him or any one, with his knowledge or consent, as a fiction to carry out a fraudulent or villainous scheme. Respondent positively denies that he has withheld or
72 withholds from the files of his attachment suit, in the circuit court said bill single, or that afterwards, by himself, or by any one in his interest, it was surreptitiously or otherwise abstracted from the clerk's office. All the allegations in the bill in reference to this matter are untrue. On the contrary respondent is informed & believes said bill single was filed with the declaration as is hereinafter shown, and he has earnestly and honestly desired to find the paper, and has been at great pains to have it found if possible, because he is satisfied that it was executed by complainant. Respondent has been long acquainted with complainant and with his handwriting and signature, and does not think

he is or can be mistaken as to the papers being genuine, and should like to be able to produce the note as evidence. How the bill single disappeared from the files, respondent does not know, but has always been of the opinion and believes that some one in the interest of complainant has abstracted it, in order to further the ends and purposes of complainant. Respondent denies that, on the 11th day of October,
73 1864, or at any other time, for the purposes alleged in the bill, or for any other, he caused or procured an information to be filed by the district attorney of the United States for this district, against said lands, and praying the same to be condemned and confiscated for the use of the Government.

It is true that an information was filed at the date alleged, but it was done without the knowledge or procurement of respondent, and he had nothing to do with it. It is true that the information was brought to a hearing, and judgment of condemnation of complainant's life-estate therein was rendered and a sale of said interest made on the 24th April, 1865, and that this respondent became the purchaser of the same at the price of seven hundred dollars. Respondent had commenced, before these proceedings, his suit aforesaid, in the circuit court of Hamilton County, and was advised by his attorney, A. G. Welcker, to purchase complainant's life-estate in and under the proceedings in the United States court, and to intervene under the claim acquired by his said attachment. On the 19th May, 1865, he obtained leave to inter-
74 vene, on giving bond and security for costs, and at a subsequent term of the court, in January, 1866, respondent did intervene in the cause, and claimed that, by virtue of his said attachment and purchase under it, he had acquired title to the lands, and asked to have the money he had bid at the marshal's sale refunded him, and upon the hearing of the cause, the court decreed that the money so paid, be refunded, except a sufficient sum to pay costs, and that the marshal should make to respondent a deed for complainant's life-estate in said lands, as is shown by the record.

Respondent insists that this order of the court was a sufficient confirmation of the sale, if any formal confirmation was necessary, which respondent does not admit. The marshal did make the deed as directed by the court. It may be that respondent's solicitor requested the marshal to make the deed. Respondent does not know as to that. At all events, the deed was sent to respondent by the marshal, and the marshal, as respondent believes, was acting only in the discharge of his legal duty in executing said deed, which deed has been duly
75 registered. Respondent believes that all due and legal notices were given of said sales, and that they were regular and operated to divest the title to said lands entirely out of complainant and vest it fully in respondent.

Respondent denies that both or either of said suits originated in fraud, or were prosecuted by false suggestions, or that the judgments rendered therein were obtained through the fraud and imposition of respondent, or of others, or all. It is not true that said sales were had and suits decided at a time when complainant was cut off from all communication with the parties concerned, or courts in which the suits were. Complainant could have easily had communication, and no doubt did have, and learn the facts in regard to the suits before the sale under respondent's attachment. As already shown, respondent did not recover judgment final in the cause in the circuit court at Harrison until October, 1865, and no sale was had under these proceedings until 1st January, 1866.

Respondent had no connection with the confiscation case until

76 after his purchase at the sale in that case. He obtained leave to intervene May 19, 1865, and did not actually intervene until after 1st January, 1866. It is not true that complainant had no notice of the institution or pendency of said suits or either of them, or of the judgments rendered or sales made in pursuance thereof, or of the claim of title asserted by respondent to said lands until about March, 1867.

Respondent denies that said suits and proceedings and sales are and were intended to be from the beginning a fraud upon the rights of complainant. It would be astonishing that in a time of peace, and in a State adjoining complainant's State of residence, that lands so valuable as complainant alleges his to be, and upon which he had resided so long, and from which he had fled because solely of the fears of personal injury, excited in his mind by his participation in the rebellion, should have been so long adversely held and claimed without complainant's knowledge, complainant having visited Hamilton County in the meantime.

77 Said lands were seized as abandoned lands by the special revenue agent of the United States, and were rented or leased by the authority of the Government to the respondent, from the 1st of October, 1865, to the 14th of August, 1866, when the farm was relinquished by the authorities of the Government to the respondent, subject to the claim of the Government for damages and rents, ever since which it has been in possession of respondent and his tenants, he claiming and holding as owner of the life estate and of the fee.

Respondent denies that he has committed waste thereon. Respondent denies that, in consequence of the obnoxious character of Joseph Ritchie, a large and valuable dwelling-house, and other improvements were burned and destroyed, but he believes the same were burned by rebel troops as an act of war; respondent denies that the rents and profits of said farm are, or have been, worth two thousand dollars per annum; and that the rents, in connection with damages sustained by waste and the burning of his house and improvements, amount to the sum of fifteen thousand dollars; or that complainant is entitled to recover of respondent anything for these items or either of them.

78 In the meantime respondent had to repair the farm and pay the taxes on it; and for the first year or two it was held by respondent very little was realized or could be realized out of the land in the disturbed condition of the country, and the difficulty of procuring labor.

In answer to the special interrogatories of complainant, respondent says that John W. Westmoreland was a stranger to him, and respondent did not know where he lived or in what business he was engaged; he represented himself as living in the south—perhaps in Georgia; that complainant had executed the bill single to him, and that he had come up, as the note was nearly due, and as he had understood complainant had property in the neighborhood of respondent, to examine into its value and satisfy himself of the prospect of securing the payment of his debt; that section of country was within the Federal lines, and troops were stationed at no great distance, and Westmoreland manifested great fear and anxiety lest he should fall into their hands, and proposed to sell the paper to respondent upon very favorable terms.

79 Respondent went to Harrison, Tennessee, to consult an attorney upon the matter, detailed the facts, and was advised to purchase the paper. Respondent was well acquainted with complainant's handwriting and signature; had examined the bill single and satisfied himself completely that complainant had executed the paper and that it was genuine.

Respondent has no knowledge of Westmoreland's present residence.

There were no witnesses according to respondent's recollection, and his recollection is positive to the note.

Respondent does not know what said bill single was executed for; when and where it was signed and delivered, and in whose presence? He supposed then, and still supposes, it was executed by Shirley after he left Tennessee, and at its date.

The bill single was indorsed to respondent by John W. Westmoreland, and the language of the endorsement, according to respondent's best recollection, was as follows: "For value received, I transfer and assign the within note to Peter Monger, March 6, 1864," (signed) "John W. Westmoreland." The consideration for the indorsement was confeder-

80 ate treasury notes, Westmoreland proposing to take that sum in that sort of currency for the paper; the amount paid Westmoreland was ten thousand dollars. The indorsement was made on the day it bore date, on the place of respondent, in Hamilton County, Tennessee. The party transferring the note said his name was John W. Westmoreland, and respondent then supposed and believed, and still supposes and believes that was his true name; he seemed to be from thirty-five to forty years of age, was about five feet and from eight to ten inches high; somewhat heavy set, weighing, probably, from one hundred and fifty to one hundred and seventy pounds; dark hair; heavy whiskers and moustache, and wore at the time, brown jeans clothes. The indorsement was not witnessed by any one. Respondent paid ten thousand dollars in confederate scrip or treasury notes for the note or bill single; it was all paid at the time and place of the indorsement, no one being present but respondent and Westmoreland.

Respondent had a portion of this money of his own; he obtained

81 a portion of it from Wesley Davis, of Hamilton County; a portion of it from John Kimbrough, and a portion of it from William Denny, both of the same county; he negotiated with David N. Bell and John L. Turnell, of the same county, for part of the money, but got none from either of them. Gen. Kraft was in command of a brigade of cavalry and infantry stationed at Ooltewah, in said county, at the time; and respondent obtained a portion of the money from his command. These were the sources from whence all the means were obtained, according to respondent's recollection, and was all, immediately before said assignment, obtained from the said parties.

Respondent does not know where said note or bill single is, and very much regrets that he does not know; it is not in respondent's possession and has not been, since it was handed by him to his attorney, A. G. Welcker, before the judgment was taken as aforesaid in the circuit court at Harrison; it was handed by respondent to his said attorney; it was filed with C. W. Vinson, the clerk of said circuit court. Who

82 took it from the files respondent does not know, and never has known.

Respondent refers to, adopts, and relies upon the record in the case of The United States against One Tract of Land of Thomas Shirley, being information No. 60—33 in your honor's court—and upon the proceedings, record, and judgment of the aforesaid cause of respondent against complainant, in the circuit court at Harrison aforesaid, a transcript of which is now on file in this court, in the aforesaid case of The United States against said tract of land. Respondent would state that the late civil war virtually ended in the spring of 1865, by the surrender of the armies of Gen's Lee and Johnston; that very soon thereafter all restrictions upon intercourse and communication between Georgia and Tennessee, were removed;

the mails restored; and complainant had near and intelligent relatives and friends near Harrison, and near the aforesaid lands, who, respondent has no doubt, fully advised him of all that was done in regard thereto,
and yet no step was taken by him to attack the proceedings, or
83 to defend or vacate them. Respondent will produce and rely on his marshal's and sheriff's deeds.

Respondent is advised that complainant's bill is demurrable for the following reasons:

1st. Because complainant might have made his defence at law and failed to do so.

2nd. Because he might and should have instituted his proceedings in the courts of the State of Tennessee to defend, or attack, set aside, and vacate, the judgment therein, according to the manner and under the provisions established by the laws of said State.

3rd. Because the bill is multifarious in this, that it seeks to set aside and avoid the judgments of the courts, as shown on its face, and also charges and seeks and account and decree for waste and damages. And respondent will rely on the benefit of these objections on the final hearing.

And having fully answered, respondent asks to be dismissed with his costs, &c.

PETER MONGER.

THO'S A. R. NELSON & D. M. KEY, *Sols.*

84 Circuit court of the United States.

KNOXVILLE, KNOX COUNTY, TENNESSEE.

Personally appeared before me, the undersigned, clerk of said court, Peter Monger, the respondent to the foregoing bill, and made oath that the facts stated in the foregoing answer, of his own knowledge, are true, and those stated upon information, he believes to be true.

PETER MONGER.

Sworn to and subscribed before me May 22, 1868.

M. L. HALL, *Clerk.*

(Endorsed:) No. 209. Thomas Shirley vs. Peter Monger. Answer of Peter Monger. Filed May 22, 1868. M. L. Hall, clerk.

Demurrer to bill.

In the circuit court of the United States for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER. } Demurrer to complainant's bill.

And the said defendant, by protestation, not confessing or admitting all or any of the matters complained of in complainant's said bill
85 to be true in manner and form, as the same are therein pleaded and set forth, says that the said bill is demurrable, and he doth demur to the same for the following causes:

1st. From his own showing the complainant had a complete and adequate defence at law where he might and should have pleaded the plea of non est factum to the bill single mentioned in his bill.

2. This honorable court can take judicial knowledge of the fact that, when the judgment at law was obtained in October, 1865, the late civil war had ceased, and there was no restriction upon the intercourse between the citizens of Tennessee and Georgia so as to prevent a knowledge of the proceedings in Hamilton circuit court being obtained by the complainant.

3. No good cause is shown in the bill why the complainant did not apply to the circuit court of Hamilton to set aside the judgment at law within twelve months after its rendition as provided by the code of Tennessee, section 3529.

86 4. The bill is multifarious, in this that it charges that a judgment at law was obtained upon a forged instrument; that it charges fraud in obtaining the judgment; that it asks an account as to waste; that it asks an account as to rents and profits, and thus blends together separate and incongruous matters not thus properly cognizable in a court of equity.

5. It does not make out a case sufficient to authorize the appointment of a receiver, and is otherwise defective for causes to be shown in argument, & especially as to the want of jurisdiction in this court to set aside a judgment at law regularly obtained in a State court.

Wherefore this defendant prays that he shall not be required to make any other or further answer to said bill, and that the same may be dismissed.

PETER MONGER.

NELSON & KEY,
Solicitors.

Circuit court of the United States for the district of East Tennessee.
May term, 1868.

87 Peter Monger makes oath that the foregoing demurrer is not interposed for delay.

PETER MONGER.

Sworn to and subscribed in open court before me, 22 May, 1868.
M. L. HALL, *Clerk.*

We certify that, in our opinion, the foregoing demurrer is well founded in point of law.
22 May, 1868.

THOS. A. R. NELSON,
D. M. KEY,
Sol's for Def't.

(Endorsed:) Demurrer to bill. Thomas Shirley vs. Peter Monger. Filed May 22, 1868. M. L. Hall, cl'k.

Be it remembered that, at a circuit court of the United States for the eastern district of Tenneesee, began and held at Knoxville, within said district, on the 3rd Monday, it being the 18th day of May, 1868, the following proceeding, among others, was had, viz:

FRIDAY MORNING, *May* 22, 1868.

Court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

88 *Demurrer overruled.*

THOMAS SHIRLEY
vs.
PETER MONGER. } Bill in equity, No. 209.

Came on the parties, by their solicitors, and the defendant's demurrer to the bill came on for argument; and, after argument being heard, the court is of opinion that the demurrer is not well taken, & it is therefore ordered that the demurrer be overruled & discharged, & the defendant is required to answer, in which he has leave to insist upon the grounds of demurrer.

And afterwards, at the said May term, 1868 of said court, the following proceeding was had, viz:

TUESDAY MORNING, *June* 2, 1868.

Court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

Agreement for taking depositions.

THOMAS SHIRLEY
vs.
PETER MONGER. } No. 209.

89 The parties hereto agree that depositions may be taken under and in pursuance of the laws of Tennessee, and the rules prescribed by the chancery courts of the State, and that all depositions so taken and filed shall be read on the hearing of this cause.

And afterwards, at the January term, 1869, of said court, the following proceeding was had, viz:

TUESDAY MORNING, *February* 16, 1869.

The court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

Continuance.

THOMAS SHIRLEY
vs.
PETER MONGER. } No. 209.

By consent of parties this cause is continued until the next term of this court.

And afterwards, at the July term, 1869, of said court, the following proceeding was had, viz:

FRIDAY, MORNING, *July* 16, 1869.

The court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

Set for trial.

THOMAS SHIRLEY
vs.
PETER MONGER. } No. 209.

By consent of parties, the trial of this cause is set for Wednesday, the 21st inst.

90 *Affidavits of Peter Monger & J. D. Steele.*

THOMAS SHIRLEY
vs.
PETER MONGER.

The defendant makes oath that he purchased note, in the pleadings mentioned, from a man calling himself John W. Westmoreland, in the manner stated by def't in his answer, and under the full belief, from his knowledge of his handwriting, that the signature of complainant thereto was genuine. Since the bill was filed affiant has made repeated efforts to find the man from whom he purchased the note, or to obtain information in regard to him, but the nearest approach he could make towards the accomplishment of either purpose, is shown in the deposition of David Westmoreland, which was read in the hearing of this cause. Affiant states that he is informed and believes that, on Tuesday last, while Col. Baxter was making the closing argument for plaintiff, and insisting that there was no such person in existence as John W. Westmoreland, and that affiant had either forged the note, or caused or procured it to be done, Lieutenant J. D. Steele, who was present in the court house, informed one of affiant's counsel that,
91 while he was serving in the Army, he knew a man, in Giles County, Tennessee, by the name of John W. Westmoreland, who was acting as depot agent at Pulaski. Affiant states that he is informed and believes that, during the late civil war, and before affiant purchased the note, Thomas Shirley went to Middle Tennessee, on two occasions for the purpose of trading; that, on one occasion he brought back wagons, negroes, bacon, sheep, horses, and mules; and that, on the last occasion, when he went to Middle Tennessee, he was arrested and held as a prisoner by the Federal forces. Where, or from whom, the complainant got said property affiant does not know, but the compl't brought it, or caused it to be brought, to Hamilton County before the date of the note, and exercised ownership over it. Affiant thinks it probable that this property, or part of it, may have formed the consideration of the note, and he believes that this fact can be ascertained within a reasonable time, in Giles County or elsewhere in Middle Tenneesee. Affiant is advised by his counsel, that the testimoney of Lieut. Steele will be of much importance to him as re-
92 moving, or tending to remove, one of the bases, if not the entire foundation, on which this suit rests. He states that he had no knowledge or information before this cause was in process of being heard, that he could make the proof by Lieut. Steele, above mentioned; that he had no previous acquaintance with said Steele, and is not related to him, to his knowledge. He, therefore, prays that this cause be remanded to the rules, and be opened for further testimony generally. This application is not made for delay but the attainment of justice.

PETER MONGER.

Sworn to & subscribed before me this 21 Aug., 1869.
M. L. HALL, *Clerk.*

Affidavit of J. D. Steele.

J. D. STEELE, of Knox County, Tennessee, states that he was brigade wagon-master, in the Federal Army at Nashville, during the late civil war, and under Capt. C. H. Irvin, for about 3 years and six months, and afterwards held the rank of first lieutenant in Company I, of the First Tennessee State Guards. While in the latter service he was stationed at Pulaski, Giles County, Tennessee, and acted as
93 regimental quartermaster for about four months. During his service at Pulaski, he became well acquainted with a man whose name was Westmoreland, and who was generally known by that name. Affiant believes his full name was John W. Westmoreland. He acted as depot agent of the railroad, and affiant's supplies were generally received through him, and he had frequent transactions with him during the present year, and between the 23 Feb. and the 20 June last.

Hearing the argument in this case, or at least a part of it, affiant states that he felt it to be his duty to communicate the fact that he knew Westmoreland to one of the defendant's counsel, & did so while Col. Baxter was making his argument on Tuesday last. Affiant has no interest or feeling in the case other than a desire to see justice done, and is not related to either of the parties, and did not become acquainted with Peter Monger until after he communicated with his counsel as above stated Affiant had previously, on the same day, informed one of complainant's counsel of the fact that he knew Westmoreland.

J. D. STEELE.

94 Sworn to & subscribed before me this 21 August, 1869.
M. L. HALL, *Clerk.*

(Endorsed:) Affidavits of Peter Monger and J. D. Steele. Filed Aug. 21. 1869. M. L. Hall, cl'k.

And afterwards, at the July term, 1869, of said court, the following proceeding, among others, was had, viz:

SATURDAY MORNING, *Aug.* 21, 1869.

Court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

Cause remanded to the rules for further testimony, and receiver appointed.

THOMAS SHIRLEY
vs. } No. 209.
PETER MONGER.

For sufficient cause appearing in the affidavits of Peter Monger and J. D. Steele, it is ordered by the court that this case be remanded to the rules, and remain open for further testimony until the next term of this court. And by consent of the parties, by their solicitors, it is ordered that G. O. Cate, of Hamilton County, Tennessee, be, and he is hereby, appointed receiver, to receive pending this suit, the rents
95 and profits of a tract of lan[illegible] the pleadings mentioned, and to account for the same as t[illegible] court may direct; and the parties

waive the execution of any bond by the receiver for the discharge of his duties. Out of the funds which may come into his hands the receiver will pay any taxes that may arise or be due upon the land, and he will take such steps as may be necessary or proper to keep the premises in repair, but without creating any charge upon either of the parties beyond the value of the rents, & he will report his action in the premises to the next term of this court.

And afterwards, at the January term, 1870, of said court, the following proceeding, among others, was had, viz:

WEDNESDAY MORNING, *February* 2, 1870.

Court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

Continuance.

THOMAS SHIRLEY
vs.
PETER MONGER. } No. 209.

By consent of parties this cause is continued until the next term of this court, and is remanded to the rules for further testimony.

96 *Receiver's report.*

To the Hon. Connally F. Trigg, judge of the circuit and district courts of the United States for the eastern district of Tennessee:

In compliance with an order of the United States district court for the eastern district of Tennessee, issued at the July term, 1869, appointing the undersigned receiver, &c., in the case of Thomas Shirley vs. Peter Monger, I have the honor to herewith submit the following report:

Since receiving the notice of my appointment there has been put up of the rents of the farm in controversy and on the premises about five hundred bushels of corn, (more or less,) in the shuck, which has been reported to me, and placed in my charge. No sales or other disposition has been made of said rents.

All of which is respectfully submitted.

G. O. CATE, *Receiver.*

(Endorsed:) Report of Geo. O. Cate, receiver, &c. Tho's Shirley vs. Peter Monger. Filed Feb. 3, '70. M. L. Hall, cl'k.

97 And afterwards, at said January term, 1870, of said court, the following proceeding, among others, was had, viz:

THURSDAY MORNING, *February* 3, 1870.

Court met pursuant to adjournment—
Present, the Honorable Connally F. Trigg, judge, &c.

Order for receiver to sell rents.

THOMAS SHIRLEY
vs.
PETER MONGER. } In chancery. No. 209.

In this cause, this day, came Geo. O. Cate, receiver, heretofore ap-

pointed in this cause, and files his report, showing that there are now about five hundred bushels of corn, more or less, in the shuck, in his hands, as rents of the premises in controversy.

By consent of the parties, it is, therefore, ordered that said Geo. O. Cate proceed to sell said corn for cash in hand, either at private or public sale, as he may deem best, and report the proceeds of such sale at the next term of this court.

And afterwards, at the July term, 1870, of said court, the following proceeding, among others, was had, viz:

THURSDAY MORNING, *August 11th*, 1870.

98 Court met pursuant to adjournment—
Present, the Honorable Connally F. Trigg, judge, &c.

Order of court to receiver for renting lands.

THOMAS SHIRLEY *vs.* PETER MONGER. } Bill in equity. No. 209.

In this cause, by consent of parties, the order heretofore made in this cause appointing George O. Cate, receiver, is amended, so as to direct said receiver to take possession of the lands in controversy, rent out the same, and receive and collect the rents. Said receiver will, however, rent said premises for only one year at a time, and make reports as heretofore directed.

Receiver's report.

To the Hon. C. F. Trigg, judge U. S. court for the dist. of E. Tenn., Knoxville:

SIR: Since my report of January last, in case of Shirley vs. Monger, I have the honor to submit the following:

Corn sold:

460 42 bu., at $1 05			$483 78
82 " " 1 00			82 00
99			$565 78
Less expenses:			
236 sacks		$35 70	
Shucking & selling		40 08	
Hauling to river		23 60	
Freight on boat		23 60	
Making pen for rents		3 00	
			125 98
Total on hand			$439 80

Subject to the order of the court.

Respectfully submitted.

G. O. CATE, *Receiver, &c.*

AUG. 1, 1870.

(Endorsed:) No. 209. Receiver's report. Thomas Shirley vs. Peter Monger. Filed Sept. 19, 1870. H. M. Aiken, clerk.

waive the execution of any bond by the receiver for the discharge of his duties. Out of the funds which may come into his hands the receiver will pay any taxes that may arise or be due upon the land, and he will take such steps as may be necessary or proper to keep the premises in repair, but without creating any charge upon either of the parties beyond the value of the rents, & he will report his action in the premises to the next term of this court.

And afterwards, at the January term, 1870, of said court, the following proceeding, among others, was had, viz:

WEDNESDAY MORNING, *February* 2, 1870.

Court met pursuant to adjournment—present, the Honorable Connally F. Trigg, judge, &c.

Continuance.

THOMAS SHIRLEY
vs.
PETER MONGER. } No. 209.

By consent of parties this cause is continued until the next term of this court, and is remanded to the rules for further testimony.

96 *Receiver's report.*

To the Hon. Connally F. Trigg, judge of the circuit and district courts of the United States for the eastern district of Tennessee:

In compliance with an order of the United States district court for the eastern district of Tennessee, issued at the July term, 1869, appointing the undersigned receiver, &c., in the case of Thomas Shirley vs. Peter Monger, I have the honor to herewith submit the following report:

Since receiving the notice of my appointment there has been put up of the rents of the farm in controversy and on the premises about five hundred bushels of corn, (more or less,) in the shuck, which has been reported to me, and placed in my charge. No sales or other disposition has been made of said rents.

All of which is respectfully submitted.

G. O. CATE, *Receiver.*

(Endorsed:) Report of Geo. O. Cate, receiver, &c. Tho's Shirley vs. Peter Monger. Filed Feb. 3, '70. M. L. Hall, cl'k.

97 And afterwards, at said January term, 1870, of said court, the following proceeding, among others, was had, viz:

THURSDAY MORNING, *February* 3, 1870.

Court met pursuant to adjournment—
Present, the Honorable Connally F. Trigg, judge, &c.

Order for receiver to sell rents.

THOMAS SHIRLEY
vs.
PETER MONGER. } In chancery. No. 209.

In this cause, this day, came Geo. O. Cate, receiver, heretofore ap-

pointed in this cause, and files his report, showing that there are now about five hundred bushels of corn, more or less, in the shuck, in his hands, as rents of the premises in controversy.

By consent of the parties, it is, therefore, ordered that said Geo. O. Cate proceed to sell said corn for cash in hand, either at private or public sale, as he may deem best, and report the proceeds of such sale at the next term of this court.

And afterwards, at the July term, 1870, of said court, the following proceeding, among others, was had, viz:

THURSDAY MORNING. *August 11th*, 1870.

98 Court met pursuant to adjournment—
Present, the Honorable Connally F. Trigg, judge, &c.

Order of court to receiver for renting lands.

THOMAS SHIRLEY *vs.* PETER MONGER. } Bill in equity. No. 209.

In this cause, by consent of parties, the order heretofore made in this cause appointing George O. Cate, receiver, is amended, so as to direct said receiver to take possession of the lands in controversy, rent out the same, and receive and collect the rents. Said receiver will, however, rent said premises for only one year at a time, and make reports as heretofore directed.

Receiver's report.

To the Hon. C. F. Trigg, judge U. S. court for the dist. of E. Tenn., Knoxville:

SIR: Since my report of January last, in case of Shirley vs. Monger, I have the honor to submit the following:

Corn sold:

460 42 bu., at $1 05			$483 78
82 " " 1 00			82 00
99			$565 78
Less expenses:			
236 sacks	$35 70		
Shucking & selling	40 08		
Hauling to river	23 60		
Freight on boat	23 60		
Making pen for rents	3 00		
		125 98	
Total on hand			$439 80

Subject to the order of the court.

Respectfully submitted.

G. O. CATE, *Receiver, &c.*

AUG. 1, 1870.

(Endorsed:) No. 209. Receiver's report. Thomas Shirley vs. Peter Monger. Filed Sept. 19, 1870. H. M. Aiken, clerk.

Subpœna.

The President of the United States of America to the marshal of the eastern district of Tennessee, greeting:

You are hereby commanded to summon G. O. Cate to appear before the clerk of the circuit court of the United States of America for the district of East Tennessee, at Knoxville, on the first Monday of Feb-
100 ruary next, to testify and give evidence in a suit pending in said court between Thomas Shirley, plaintiff, and Peter Monger, defendant, on behalf of the pl'ff; herein fail not, and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Knoxville, in the said district, the second Monday in January, 1869.

M. L. HALL, *Clerk.*

(Endorsed:) No. 209. Subpœna. Thomas Shirley vs. Peter Monger. Issued Jan'y 16th, 1869. M. L. Hall, clerk.

Came to hand same day iss'd. Executed as commanded Jan'y 20th, 1869.

J. H. PICKEL,
Dept. U. S. M., E. Dist. Tenn.

And afterwards, at the January term, 1871, of said court, the following proceeding, among others, was had, viz:

MONDAY MORNING, *January* 30, 1871.

Court met pursuant to adjournment—
Present, the Honorable Connally F. Trigg, judge, &c.

Final decree.

THOMAS SHIRLEY *vs.* PETER MONGER. } Bill in equity. No. 209.

101 This cause coming on, was finally heard and determined on this the 28th day of January, 1871, by the Honorable Connally F. Trigg, judge, &c., upon the pleadings and proofs; and the court being of opinion that the paper writing which purported to be a promissory note executed by complainant to one John W. Westmoreland and assigned to the defendant, Peter Monger, upon which the latter obtained a judgment against complainant, as alleged in the pleadings in the circuit court of Hamilton County, Tennessee, at its term, holden at Harrison, in October, 1865, was a forgery, and that said judgment was fraudulently obtained without service of process or notice to complainant: The court is pleased to order, adjudge, and decree that said judgment, and the sale, and conveyance, made by the sheriff of Hamilton County, Tennessee, of the lands in controversy to defendant Monger, by authority of an execution issuing to enforce said judgment, be, and the same is hereby, set aside, annulled, and shall be for nothing held.

And the court doth further order, adjudge, and decree, that defendant Monger be, and he is hereby, injoined from asserting title, under
102 said judgment, sale, and conveyance, by said sheriff, to him, to any part of said land, to the prejudice of complainant or to any one claiming the same through or under him.

And the court is further pleased to order, adjudge, and declare that the defendant, Monger, acquired no valid title to any part of the lands

in controversy by his purchase at a sale thereof, made by order of the district court of the United States, holden at Knoxville, Tennessee, for the eastern district of Tennessee, in a suit of the United States against complainant and doth hereby decree that he be perpetually injoined from asserting title, under said sale and purchase, to said lands or to any part thereof, as against the complainant or any one claiming through or under him.

And the court doth further declare that complainant is entitled to the rents and profits that have accrued to the defendant or which, by reasonable care and diligence, ought to have accrued to him while he had said land in possession of himself and his tenants, less the amount paid by him in discharge of costs in the aforesaid suit of the
103 United States against complainant, and such sums as he may have paid for taxes and expended in making permanent betterments upon said premises. And is therefore pleased to order, adjudge, and decree that the clerk of this court hear proof and report to the next term of this court, what profits the defendant has received or by due care and diligence ought to have realized from said premises while in possession of himself and tenants as aforesaid, after computing legal interest thereon and deducting amounts expended by defendant as aforesaid, for costs, taxes, and permanent improvements.

And the court is further pleased to order George O. Cate to make a full and detailed repert of his actings and doings, as receiver in this case, to the next term of this court, and bring with his report all monies in his hands and pay the same over to the clerk of this court.

Appeal bond.

Know all men by these presents that we, Peter Monger and H.
104 C. Alexander, are held, and firmly bound, unto Thomas Shirley in the penal sum of three thousand dollars, to be well and truly paid.

But the condition of this bond is such, that whereas the above-bound Peter Monger has this day prayed an appeal from a decree pronounced in the circuit court of the United States for the dist. of East Tennessee, equity side, in favor of the said Thomas Shirley against the said Peter Monger, to the Supreme Court of the United States, at Washington:

Now if the said Peter Monger shall, with effect, prosecute said appeal, or shall satisfy and perform the decree of the said Supreme Court that may be pronounced in said cause, then this bond to be void, otherwise to be in full force and effect. This Feb'y 10, 1871.

PETER MONGER. [L. S.]
H. C. ALEXANDER. [L. S.]

(Endorsed:) No. 209. Appeal bond. Thomas Shirley vs. Peter Monger. Filed Feb'y 10, 1871. H. M. Aiken, clerk.

105 COMPLAINANT'S TESTIMONY.

Interrogatories to be propounded to Joseph G. Richey.

In the circuit court of the United States in and for the eastern district of Tennessee, holden at Knoxville.

THOMAS SHIRLEY
vs.
PETER MONGER

The subjoined interrogatories are filed and are to be propounded to

Joseph G. Richey, in behalf of the complainant. His answers thereto, when obtained to be read as evidence on the hearing of the above-entitled cause.

Question 1st. Do you know anything about the forging of a note on Thomas Shirley for ten thousand dollars in favor of John W. Westmoreland? If you do, when and where was this note forged; who did the writing; for whose benefit was it forged; who, if any, were present; under whose advice was it forged; what was said by the parties at the time? State fully all the facts connected with the transaction.

Question. 2d. Was an endorsement, purporting to be an assignment from John W. Westmoreland to Peter Monger also forged on said note; if so who wrote said endorsement; at whose instance
106 and in whose presence, and by whose advice was it done? State fully all the facts you may know connected with this part of the case.

BAXTER,
Solicitor for Complainant.

I acknowledge service of the filing of the above interrogatories, June 3rd, 1868.

THO'S A. R. NELSON,
Sol. for Peter Monger.

I, M. L. Hall, clerk of the circuit court of the United States for the eastern district of Tennessee, certify that the foregoing is a true copy of the interrogatories now on file in my office in the suit of Thomas Shirley against Peter Monger, now pending in said court at Knoxville, in said district.

Given under my hand and the seal of said court at office, this 26th day of June, 1868.

[SEAL.] M. L. HALL, *Clerk.*

(Endorsed:) No. 209. Copy of interrogatories. Tho's Shirley vs. Peter Monger.

Commission.

UNITED STATES OF AMERICA.
107 *Eastern District of Tennessee:*

To JAMES R. PACE, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give unto you full power and authority to examine all witnesses whatsoever, as well on behalf of Thomas Shirley, plaintiff, as of Peter Monger, defendant, or either of them, in a certain matter of controversy now pending in our circuit court of the United States, held at Knoxville in the eastern district of Tennessee, for the sixth judicial circuit, on their respective corporal oaths, first taken before you in due form of law, (or their affirmation if of that sect called Quakers,) and that you take such, their examinations and reduce them to writing in your own handwriting, or in the handwriting of the deponent, in your presence, stating in each deposition, specially, as near as may be, the ages of the deponents, the parties present, and the time and place of taking the deposition. And, when you shall have so taken them, you are to send them, without delay, to the clerk of our said court at
108 Knoxville, closed up under your seal or seals, distinctly certified and set forth, together with this writ.

Witness Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the 3 Monday of May, 1868.

[SEAL.] M. L. HALL, *Clerk.*

Deposition of J. G. Richey.

In the circuit court of the United States for the eastern district of Tennessee, at Knoxville.

THOMAS SHIRLEY
vs.
PETER MONGER.

Deposition of Joseph G. Richey, a witness for the complainant in the above cause, taken upon notice, on the 18th day of August, 1868, at the law office of James T. Shields, near Bean Station, in Grainger County, Tennessee, in the presence of R. M. Edwards, solicitor for complainant, the defendant, nor counsel for defendant not being present; said deposition taken before James R. Pace, commissioner.

The said witness, JOSEPH G. RICHEY, aged 25 years, after being first duly sworn deposed as follows:

109 Question 1st by compl't sol. Do you know anything about the forging of a note on Thomas Shirley for ten thousand dollars in favor of John W. Westmoreland; if you do, when and where was this note forged; who did the writing; for whose benefit was it forged; who, if any, were present; under whose advice was it forged; what was said by the parties at the time? State fully all the facts connected with the transaction.

Answer. I know of the forging of a note on Thomas Shirley for ten thousand dollars, but in whose favor said note was drawn I am not able to state. I think the said note was forged about the last of June or first of July, 1864, in Peter Monger's carding-machine, in Hamilton County, Tennessee, near the residence of Peter Monger. I am not satisfied in my own mind who did the writing, but it was Peter Monger or R. G. Campbell, and I think, from my knowledge of the handwriting, it was done by said R. G. Campbell. I afterwards saw the said
110 note at my house when I lived in said county of Hamilton, in the possession of said Peter Monger. Peter Monger, then and there, pulled out some papers and showed me this said note, & winked his eye at me, remarking at the same time that this said note was the thing we were doing at the carding machine the other day, handing me the said note at the time, and said to me that some day he might need me to stand to him; that if I would put out threats against said Thomas Shirley and prevent him from coming back there, he would give me fifty dollars in money and a home on the farm as long as I lived, (meaning said Shirley's farm;) he said that he probably might have a suit some time about the said farm of Thomas Shirley, and if so, he would then need me as a witness. At the time the said Monger showed me the said note he remarked, in his conversation, that he did not write said note, but I think he said he had it done; I do not now recollect for whose benefit said note was forged, as it has been so long since the said transaction; on the day said note was written there was present, Peter Monger, R. G. Campbell, and myself; there were others passing about in & out of the card-
111 ing machine, but they were paying no attention to the said transaction. I do not know under whose advice said note was forged, except what the said Peter Monger told me, which I have already

stated. Before the said note was written the said Peter Monger & R. G. Campbell were talking a great deal to themselves, and, from appearances, it seemed they did not desire to have me hear what was said between , and, therefore, I give back and do not know what was said by the parties at the time. In accordance with the promise made to me by the said Peter Monger, I continued to live on the farm of said Thomas Shirley & in the house of said Shirley *& in the house of said Shirley* until Dec'r, 1864; and would have remained longer, but for the burning of the house in which I lived. I must state, in conclusion, by way of explanation to my answer, that I did not see the said note which was forged, as above stated, at the time it was written in said carding-machine; I simply saw the parties together when the writing was
112 done, and the first I saw said note was when it was afterwards handed to me to look at by said Peter Monger, as above stated.

Question 2nd. by compl't sol. Was an endorsement, purporting to be an assignment from John W. Westmoreland to Peter Monger, also forged on said note; if so, who wrote said endorsement, at whose instance, and in whose presence, and by whose advice was it done? State fully all the facts you may know connected with this part of the case.

Answer. I have forgotten whether or not there was an endorsement purporting to be an assignment from said John W. Westmoreland to said Peter Monger on said note; if there was, I could not state who wrote said indorsement on said note, nor could I state at whose instance, nor in whose presence, nor by whose advice it was done.

And further the deponent saith not.

J. G. RICHEY.

113 I do hereby certify that the foregoing deposition was taken before me, as stated in the caption, and reduced to writing by me; and I certify that I not interested in the cause, nor of kin or counsel to either of the parties; that the same was not altered or changed after it was taken; and that I sealed it up and delivered it to R. M. Edwards without being out of my possession, or altered after it was taken.

Given under my hand the 18th day of August, 1868.

J. R. PACE,
Commissioner.

(Endorsed:) Deposition for compl't, Joseph G. Richey. Thomas Shirley vs. Peter Monger. Filed Aug. 19, 1868. M. L. Hall, clerk.

Interrogatories to be propounded to Thomas Shirley.

In the circuit court of the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY }
vs. }
PETER MONGER. }

Interrogatories to be propounded to Thomas Shirley, the complainant, of Thomaston, Georgia, his answer, when made and returned, to be read as evidence in his behalf on the hearing of the above-entitled cause.

114 Interrogatory 1st. Where were you on the 15th Dec'r, 1863, and what was your physical condition on that day?

Interrogatory 2nd. Did you ever know a man by the name of John W. Westmoreland; if so, where did he live, and where is he now?

Interrogatory 3rd. Did you, on the 15th Dec'r, 1863, or at any time during the fall, winter, or spring of 1863–'64, execute a note to John W. Westmoreland, or to any one else, for $10,000 for any purpose whatever?

Interrogatory 4th. Did you execute the note for $10,000 on which def't, Peter Monger, bro't suit by attachment in the circuit court at Harrison, Hamilton County, Tennessee—the note in controversy in this case? If so, state the circumstances, &c., attending its execution; when and for what it was given?

BAXTER,
Atto. for Complainant.

115 Cross-interrogatories.

1. Were you not concerned in, or favorable to, the late rebellion; and were you not, on the 15th Dece'r, 1863, a refugee from your home in Tennessee, in consequence of the occupation of East Tennessee by the Federal Army?

2. Where was your home before you left Tennessee; and at what time did you leave; and where did you stay after you left?

3. Were you not apprehensive that your property would be confiscated; and did you not agree to sell it to Westmoreland; and did you not execute the note in controvesy to him so that he might have it levied upon and sold, and, in this way, save it for you, or complete the purchase?

4. Did you not direct Westmoreland, or some other person, to have the property attached so as to prevent its confiscation?

116 5. If such was not the scheme between you and Westmoreland, then state whether you received any confederate treasury notes or bonds—notes or bonds on individuals—bank-notes or other property from him; and if so, when, where, and of what amount or kind?

6. Who was present at any conversations or transactions between you and Westmoreland; and if so, when & where?

NELSON,
Att'y for Monger.

Deposition of Thomas Shirley.

In the circuit court of the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

The depositions of James B. Shirley, Thomas Shirley, Adaline R. Cumbia, witnesses for complainant in the above case, taken upon interrogatories on the 26th (twenty-sixth) day of September, A. D. 1868, at Thomaston, in the State of Georgia, in the absence of the defendant.

The said THOMAS SHIRLEY, being duly sworn, according to law, deposes as follows:

117 Interrogatory 1st. I was in the State of Georgia, near Tunnell Hill at the house of a Mr. Williamson, and was very sick on that day, confined to my bed unable to sit up.

Interrogatory 2d. I never knew such a man as John W. Westmoreland in my life.

Interrogatory 3rd. I never executed to John W. Westmoreland, or to any other person for that amount in my life.

Interrogatory 4th. I did not give the note in question, and it is a base forgery, nor was there ever any contract or consideration for anything whatever between us. Never did I even hear of such a man before.

BAXTER,
Atto. for Complainant.

Cross-interrogatories.

1st. I voted for cecession, but was not concerned in nor favor-
118 able to the war. I left home the 25th day of Nov'r, 1863, under the advice of a neighbor, that if I did not get away that day that he thought from the threats that had been made, that it would perhaps cost me my life. On the 15th day of December, 1863, I was not a refugee from my land in East Tennessee. My wife and daughter was in possession of everything at home.

2. I lived in Hamilton County, East Tennessee for some thirty years and the rise. I left my home in Tennessee on the 25th day of November, 1863. I remained near Tunnell Hill, Ga., until Jan'y, 1864, after that I removed to Upson County, Georgia, where I have resided ever since.

3d interrogatory. I did not apprehend any danger of confiscation, neither did I agree to sell my land to Westmoreland, nor any other person in the round world; I did not execute the note to Westmoreland in controversy, nor make any agreement to have the land sold, &c., in order to save it for me.

119 Int. 4th. I did not direct Westmoreland nor any other person to have my land attached so as to prevent confiscation—never.

Inter. 5th. There never was, never, any scheme between myself and Westmoreland or any one else. I never received any confederate treasury notes or bonds on individuals, bank-notes or other property from him or any other person whatever.

Inter. 6th. I never had any conversation with any one to sell, nor did I try to sell my possessions to any one.

Further deponent saith noi.

THOMAS SHIRLEY.

GEORGIA, *Upson County.*

The foregoing deposition were taken by me, as stated in the caption, and reduced to writing by me; and I certifie that I am not interested in the cause, nor of kin or of counsel to either of the parties, and that I sealed them up and put them in the post office without being out of my possession, or altered, after they were taken.

120 Given under my hand this day and date above written. September 26th, 1868.

J. M. S. GREENE.
Justice of the Peace in and for said State and County.

(Endorsed:) Rec'd from P. O. at Knoxville, Tenn., sealed up, on the Oct., 1868. Then opened and filed by me. M. L. Hall, cl'k.

Interrogatories to be propounded to James B. Shirley.

In the circuit court of the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Interrogatories to be propounded to James B. Shirley, of Thomaston, Georgia, in behalf of the complainant; his answers when taken and returned, to be read in evidence on the hearing of the above-entitled cause.

Interrogatory 1st. Do you know, of your own personal knowledge, where the complainant was during the month of December, 1863? If so, you will please state fully, where he was, and what his physical condi-
121 tion was during that period.

Interrogatory 2nd. Are you a son of complainant and have you been familiar with his property and business transactions; If so, how long, and for what period of time?

Interrogatory 3rd. Did you know a man by the name of John W. Westmoreland? If so, where did he live when you knew him, and where is he now?

Interrogatory 4th. Do you know of any transaction between complainant and John W. Westmoreland at any time? If so, when, and what was it?

Interrogatory 5th. Did the compl't, at any time during the fall or winter of 1863–'64, to your knowledge, execute any note, or other obligation to John W. Westmoreland or to any body else for $10,000, or for
122 any other large sum of money? If so, when, and to whom was said note or obligation executed, and for what consideration?

Interrogatory 6th. Do you know, or have you ever heard from him, or from any one of the family, of his having received any equivalent in money or in property, for a $10,000 note, alleged to have been executed by him in Dec., 1863, or about that time? If so, state fully what it was.

Interrogatory 7th. Could he, in your opinion, have made a business transaction involving $10,000, without your knowing it? If you think he could not, state the reasons why you think so.

BAXTER,
For Compl't.

Cross interrogatories.

1. Do you know of any transaction whatever between your father and John W. Westmoreland; and, if so, what was it, and when did it take place?

123 2. Was not your father in favor of, or concerned in the late rebellion? Was he not a refugee from Tennessee, and apprehensive that his land, or other property, would be confiscated? And did he not execute his note to Westmoreland, so that the latter might have his land and other property levied upon and sold, and in some way save it for him?

3. If your father made no such arrangement, did not Westmoreland

let him have confederate notes, and if so, how much; or property, and if so, how much?

4. At what place, and when did any transactions take place between Westmoreland, or any person for him, and your father? And if so, state all that was said and done at the time.

NELSON,
Sol. for Def't.

Deposition of James B. Shirley.

In the circuit court of the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

124 Interrogatories to be propounded to James B. Shirley, of Thomaston, Georgia, in behalf of the complainant, his answers, when taken and returned, to be received in evidence on the hearing of the above-entitled cause.

Interrogatore 1st. I do; he was near Tunnell Hill, Georgia, or thereabouts, and was sick during that period.

Interrogatore 2nd. I am a son of complainant, and have been very familiar with his property & all his transactions; because he always consulted me before transacting any business whatever. I have always lived with him—my father.

Interrogatore 3rd. I never did know such a man as John W. Westmoreland, nor where he now lives.

125 Interrogatore 4th. I never knew of any transaction between complainant and John Westmoreland, nor any one else in that respect.

Interrogatore 5th. At no time of the fall of 1863 & 1864. I have no knowledge of any note or obligation having been executed to John W. Westmoreland, as stated, or any other person, for the amount, as stated —$10,000. If such a transaction had been, I certainly should have known something of it.

Interrogatorie 6th. I never heard from him or any member of the family or otherwise of his having received of any one money, property, from any one whatever in Dec'r, 1863.

Interrogatorie 7th. He could not, because I was with him frequently during December, 1863, and such was his condition during that period that he was unable to transact business; and furthermore, if he
126 had been able to have transacted business, he certainly would have consulted with me, because it was his universal custom to do so in all his matters.

Cross-interrogatories.

1. I do not of any, at any time or place under the sun, between my father & John W. Westmoreland, or any one else (as to the question.)

2. Interrogatorie. He was not, to my knowledge. He was not a refugee, nor did he fear the confiscation of his land or other property. He never did execute his note for $10,000 to Westmoreland.

3. Interrogatore. He never received *no* confederate money from Westmoreland or other property.

4th interrogatore. At no time nor at place did I ever know
127 of any transaction between my father or any other person for him—Westmoreland.

JAMES B. SHIRLEY.

GEORGIA, *Upson County:*

The foregoing depositions were taken by me, as stated in the caption, and reduced to writing by me; and I certifie that I am not interested in the cause, nor of kin, nor of counsel to either of the parties, and that I sealed them up, and put them in the post office, without being out of my possession, or altered after they were taken.

Given under my hand the day and date above written—Sept. 26th, 1868.

J. M. S. GREENE,
Justice of the Peace in and for said State and County.

(Endorsed:) Rec'd from P. O., at Knoxville, Tenn., sealed up, on the 5th Oct., 1868. Then opened and filed by me. M. L. Hall, cl'k.

Interrogatories to be propounded to A. R. Cumbrie.

In the circuit court for the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

128 Interrogatories to be propounded, in behalf of the complainant, to Adaline R. Cumbrie, of Thomaston, Georgia—her answers, when made and returned, to be read as evidence on the hearing of the above entitled cause.

Interrogatory 1st. Are you a daughter of the complainant; if so, do you know when he left his home in Hamilton County, Tennessee, in the fall of 1863; if you do, state when it was, and did he return to East Tennessee at any time during that fall or ensuing winter or spring?

Interrogatory 2nd. When and where did you next see him after his leaving his home, as stated in your preceding answer, and what was his physical condition?

Interrogatory 3rd. Did you ever know a man by the name of John W. Westmoreland; if so, where did he live, what did he do, and where is he now?

129 Interrogatory 4th. Did you ever know of your father's having any business transactions with such a man; if so, when, and what was it?

Interrogatory 5th. Do you know of your father buying any property, or getting any equivalent for $10,000 in the fall or winter of 1863-'64; if so, what was it, and where, when, and from whom was it obtained?

Interrogatory 6th. Could he, in your opinion, have had a transaction about that time, involving as much as $10,000, or anything like that sum, without your knowing it? If you say he could not, state fully all your reasons for thinking so.

BAXTER, *Atto. for Compl't.*

Cross-interrogatories.

1. Did not your father leave his home in Hamilton County because he was concerned in or favorable to the late rebellion, and be-
130 cause the Federal Army had entered East Tennessee, and he believed he would be either captured or killed?

2. Did you not hear your father say that he believed his property would be captured or confiscated by the Federal authorities, and that he was anxious to sell it; if so, when, where, and to whom did you hear him say so?

3. Did not your father receive confederate notes or bonds, bank-notes, notes or bonds on individuals, or any other kind of property, real or personal, from John W. Westmoreland; and if so, when and where did he receive them, or was he to receive them; and state all the conversation that occurred, and all that was done or said at the time?

4. If your father received nothing from Westmoreland, was it not agreed and arranged between them that he was to execute the note in controversy to Westmoreland, and that the latter was to come to Hamilton County, and have his property attached and sold to save it from confiscation, and to hold the title for his benefit?

131 5. If nothing like this was the arrangement between them, then state any conversation or agreement you ever heard between them on any subject or at any place.

6. Were you with your father on the 15 Dec., 1863, when the note was executed; and, if so, where was he on that day?

7. Were you with your father from the time he left Hamilton County in the fall of 1863; and, if not, how long were you separated from him, and at what time in the month of December, 1863?

NELSON, *Att'y for Monger.*

Deposition of A. R. Cumbrie.

In circuit court for the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Interrogatories to be propounded, in behalf of the complainant, to Adaline R. Cumbrie, of Thomaston, Georgia; her answers, when made and returned, to be read as evidence in the above-entitled cause.

132 1st interrogatore. I am. He left his home in Hamilton County, Tennessee, on the 25th Nov'r, 1863. He never returned home that fall, winter, or spring.

2d interrogatore. About the first of January, 1864, I saw him for the first time, after he left home, at the house of Mr. Williamson, near Tunnel Hill, Georgia. I found him very sick.

3d interrogatore. I never knew a man by the name of John W. Westmoreland. I have no idea of where lived, or his occupation.

4th interrogatore. I never did know of my father having any transaction with such a man as Westmoreland.

5th interrogatore. I do not.

133 6th interrogatore. He could not, because I always kept his money and all his valuable papers, and he was at that time very sick and unable to do anything.

Cross-interrogatories.

1st. He did not, but left because of the threatened of the citizens; not the fear of the Federal forces.

2d interrogatory. I never heard him say that he was afraid of confiscation of his property by the Federal authority, nor that he was anxious to sell it, but always intended to return home again.

3r. 3rd interogatore-cross. He never received any confederate notes, bonds, or property, on individuals, or from John W. Westmoreland, neither was he to receive anything.

4th interrogatore. Never was there such an agreement between the parties.

134 5th inter'og. I never knew such a man as Westmoreland; hence I could not have heard any such conversation, having no idea of any such living man.

6th inter'og. I was in Tennessee on that day. My father, I suppose, in Georgia, sick at that time.

7th inter'og. I was not. He left home on the 25th of November, 1863, and I visited him about the first of Jan'y, 1864.

ADALINE R. CUMBIE.

GEORGIA, *Upson County:*

The foregoing depositions were taken by me, as stated in the caption, and reduced to writing by me; and I certifie that I am not interested in the cause, nor of kin, nor of counsel to either of the parties, and that I sealed them up and put them in the post office, without being out of my possession or altered after they were taken.

135 Given under my hand the day and date above written. Sept. 26th, 1868.

J. M. S. GREENE,
Justice of the Peace in and for said State & County.

(Endorsed:) Rec'd from P. O., at Knoxville, Tenn., sealed up on 5th Oct., 1868, then opened and filed by me. M. L. Hall, cl'k.

Interrogatories to be propounded to C. D. Luttrell.

In the circuit court for the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Interrogatories to be propounded in behalf of the plaintiff to C. D. Luttrell, of Whitfield County, Georgia, his answers, when taken and returned, to be read as evidence on the hearing of the above-entitled cause.

Interrogatory 1st. Did you at any time shew the defendant, *the defendant* Peter Monger, a slip of paper, purporting to be from one Womble; if so, when and where did you shew it to him; and if def't

136 said at that time where and from whom he got the $10,000 note in controversy in this case, you will state all he said about it; state the conversation fully?

Interrogatory 2nd. If you know any other fact or heard the defendant say any other thing which would be material to complainant's case, state fully what it is.

BAXTER, *Atto. for Compl't.*

Cross-examination.

1. Did you hear the complainant say anything in the fall of 1863 or the winter of 1863–4, about selling his property or putting it out of his hands, or being fearful that the Federals would take or confiscate it; and, if so, what did he say?

2. Do you know of any dealings, transactions, or conversations between complainant and John W. Westmoreland; and, if so, relate them?

3. Did you ever know or see John W. Westmoreland; and, if so, when and where?

NELSON, *Att'y for Monger.*

137 *Deposition of C. D. Luttrell.*

In the circuit court for the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Deposition of C. D. Luttrell, of Whitefield County, Georgia, witness for the plaintiff in the above cause, taken upon interrogatories, on the 15th day of October, 1868, at Cleveland, Tennessee, neither pl'ff nor def'd. present. Taken before A. J. White, C. & M.

The said witness, aged 56 years, being duly sworn, deposes as follows:

Ans. to 1st int. I did, on one occasion, show to Peter Monger a slip of paper written by Alexander Womble to Thomas Shirley. I showed it to him in Chattanooga, Tenn., where Womble wrote it. The circumstance under which the paper was written was this: I was in Chattanooga on business in the fall of 1865, when I accidentally met Womble. He asked me if I knew where Thomas Shirley was, and if I knew his post-office. I told him I did. He then handed me a slip of
138 paper, which he requested me to Shirley. The note had some reference to Shirley's farm, and Womble said he knew something that was of great importance to Shirley about his farm, it being the one now occupied by Monger. Just as Womble handed me the note Monger came up to us, & I showed him the note or slip & he read it. I thought Monger suspicioned me of taking sides with Shirley in the dispute with Monger & I showed him the note to allay his suspicion. I told him that was what Womble was writing to Shirley. Monger did not say anything now, that I recollect, further than to make light of the matter, and said that if there was any fraud in the note in question that he was innocent.

Ans. to 2d int. I resided in Georgia in 1865–6. Thomas Shirley lived there also, and learning that I was coming to Tennessee, he came with me, as I now recollect from Atlanta, saying that he wanted to see Peter Monger. On arriving at Chattanooga, he induced me to go to
139 Monger's house & ask him to come to Chattanooga to see him. On the return to Chattanooga I asked Monger about the Shirley land and how he got the note, and told him that I thought there was something singular & mysterious about it. He said that he had bought the note from one Westmoreland. I asked him how he had managed to get up so much money as to buy a ten-thousand-dollar note. He said that

he had first tried to get the money from one David Bell, of Harrison, Tenn., but that Bell knew his object, and that he, Monger, either had to take Bell in as a partner or pay him an exhorbitant price for the confederate money. He said that he paid confederate money for the note, and that when he went to David Bell to get the confederate money to purchase it, Bell wanted to become a partner with him & purchase the note from Westmoreland, but that he declined, & then Bell would not let him have the money on reasonable terms, so he said he turned out & bought it from the boys, meaning the soldiers, at ten cents on
140 the dollar, & thus got up enough to get the note. Monger never told me where he saw Westmoreland, nor the date of the purchase, but said it was shortly after the Federals came to Chattanooga. When I went to see Monger to get him to come to Chattanooga to see Shirley, he told me to tell Shirley that he, Shirley, could beat a law-suit by compromising the question—that he, Monger, had no proposition to make, but would receive one.

Cross-examination:

Ans. to 1st int. I never heard the plaintiff say anything in the fall of 1863 or in the winter of 1863–4, about selling his property or putting it out of his hands, or being fearful that the Federals would take it or confiscate it.

Ans. to 2d int. I never knew of any dealings between pl'ff and Jno. W. Westmoreland, nor of any conversations or transactions.

141 Ans. to 3d int. I never knew or saw Jno. W. Westmoreland to know him.

And further deponent said not.

C. D. LUTTRELL.

STATE OF TENNESSEE,
County of Bradley:

The foregoing deposition was taken before me, as stated in the caption, & reduced to writing in my presence; and I certify that I am not interested in the cause, nor kin or counsel to either of the parties, and that I sealed them up and put them in the post office at Cleveland, Tennessee, without being out of my possession, or altered after they were taken.

Given under my hand & seal this 15th Oct., 1868.

A. J. WHITE, *C. & M.*

(Endorsed,) No. 209. Thomas Shirley, vs. Peter Monger. Deposition. Received this deposition from the post-office on the 19th Oct., 1868, sealed up, and opened the same in my office and placed the same on file, without change or alteration in any manner whatever.

M. L. HALL, *Clerk.*

142 *Interrogatories to be propounded to Geo. Montgomery.*

In the circuit court for the United States, in and for the eastern district of Tennessee.

THOMAS SHIRLEY,
vs.
PETER MONGER

Interrogatories to be propounded in behalf of the complainant, to George Montgomery, of Meigs County, Tennessee; his answers, when made and returned, to be read in evidence on the hearing of the above-entitled cause:

Interrogatory 1st. Do you know where the complainant was on the

15th Dec'r, 1863? If so, state where he was and what his physical condition was; if sick, you will state fully his condition.

Interrogatory 2nd. Could he, in your opinion, have executed a note for $10,000 on that day without your knowing it? If you answer that he could not havo done so, please state fully all your reasons for this belief.

143 Interrogatory 3rd. How long, if at all, did you wait on him when he was sick, at Williamson's, near Tunnell Hill, Georgia, and did he during that time, to your knowledge or information, receive in property or money, any equivalent for a $10,000 note, or for any other large amount.

Interrogatory 4th. Did you ever know a man by the name of John W. Westmoreland; if so, who is he, where has he resided, and did you see him at Williamson's during the whole time the complainant was sick at that place?

Interrogatory 5th. If there is any other fact which, in your judgment, is material to either party to this suit, state it.

BAXTER,
Atto. for complainant.

Cross-interrogatories.

1. Did you, in the fall or winter of 1863, hear any conversation between John W. Westmoreland and the complainant; and if so,
144 where did it occur and what was said?

2. Did you hear complainant say anything about John W. Westmoreland in the fall or winter of 1863; and if so, what was it?

3. Did you hear the complainant, in the fall or winter or 1863 or 1863–4, say anything about being afraid that his property would be confiscated or taken by the Federals?

4. Did you hear complainant have any conversation about selling his property, or putting it out of his hands, or getting a friend to secure it for him; and if so, state all he said on the subject?

NELSON,
Att'y for Monger.

Deposition of Geo. Montgomery.

In the circuit court of the United States for the eastern district of Tennessee.

THOMAS SHIRLEY }
vs. }
PETER MONGER. }

Deposition of George Montgomery, a citizen of Meigs County,
145 Tennessee, aged sixty-seven years, taken upon interrogatories, herewith filed, before me at my office in Decatur, Meigs County, Tennessee, Oct. 27, 1868.

Said witness, being duly sworn according to law, deposes as follows:

Interrogatory 1st. Do you know where the complainant was on the 15th Dec'r, 1863? If so, state where he was and what his physical condition was; if sick, you will state fully his condition.

Answer. My recollection is that he was at a man by the name of Williamson, in Whitfield County, Georgia, about two and a half miles from Tunnell Hill; he was sick, and very bad sick, and continued so for

two weeks or more, and was so bad at one time that the landlady and myself thought he was dying; his disease was diar*eoh*; he was so low part of the time that he was in no condition to attend to business, and sometime' was scarcely able to talk.

146 Interrogatory 2d. Could he have executed a note for $10,000 on that day without your knowing it? If you answer that he could not, please state fully all your reasons for this belief.

Answer. He was in no condition while at Williamson's to give a note, and no man came there to get him to give such a note, and if any person should have come, I certainly would have known it, as I was there with him all the time and waited on him.

Interrogatory 3d. How long, if at all, did you wait on him when he was sick at Williamson's, near Tunnell Hill, Georgia; and did he, during that time, to your knowledge or information, receive in property or in money, any equivalent for a $10,000 note or for any other large amount?

147 Answer. I think that I waited on him about two weeks, when he was so bad; I left home the night after the battle of Missionary Ridge, on the 25th or 26th of November, 1863, and went to Mr. Williamson's as before stated, and some few days thereafter I saw the complainant, Mr. Sherley; about the 10th or 12th of December Mr. Sherley came to Mr. Williamson's, as before stated, and I waited on him until about the 25th of December, when he was able to walk out to the stable to see a horse of mine upon which there was a race to be run that day. I waited on him altogether about two weeks, and he remained at the same house with me two or three weeks after he recovered from his sickness, during which time his family came to him, and sometime near the last of January, 1864, I removed his family to Dalton, Georgia, and that he never, during any part of this time, received in property or money, any equivalent for a $10,000 note nor any other large amount. I know he had but one horse until his family came, and that *she* had two very poor horses, one of which was left, being too poor to travel.

148 Interrogatory 4th. Did you ever know a man by the name of John W. Westmoreland; if so, who is he; where has he resided, and did you see him at Williamson's during the whole time complainant was sick at that place?

Answer, I never knew a man of that name. I do not know who he is, nor where he resided; nor was he at Williamson's, to my knowledge, during the time I was there.

Interrogatory 5th. If there is any other fact which, in your judgment, is material to either party to this suit, state it.

Answer. I do not know of any material fact that would be material to either party.

149 Cross-interregatory 1st. Did you, in the fall or winter of 1863, hear any conversation between John W. Westmoreland and the complainant, and if so where did it occur and what was said?

Answer. I never saw Mr. Westmoreland, nor heard any conversation between them.

2d. Did you h*ere* complainant say anything about John W. Westmoreland in the fall or winter of 1863; and if so, what was it?

Answer. I never heard him mention his name.

3d. Did hear the complainant say anything in the fall or winter of 1863 or 1863-4—anything about being afraid that his property would be confiscated or taken by the Federals?

150 Answer. I heard him say he expected they had destroyed everything he had; I do not remember to have heard him say anything about confiscation.

4th. Did you here complainant have any conversation about selling his property, or putting it out of his hands, or getting a friend to secure it for him; and if so, state all he said on the subject.

Answer. I never heard him have any conversation about selling his property, putting it out of his hands, or getting a friend to secure it for him; he always spoke of it as his property, and he expected they had destroyed it.

Further this deponent saith not.

his
GEORGE + MONTGOMERY.
mark.

STATE OF TENNESSEE, *Meigs County:*

The foregoing deposition was taken before me, as stated in the caption, and reduced to writing by me; and I certify that I am not interested in the cause, nor of kin nor counsel to either of the parties;
151 and that I sealed them up and put them in the post office, without being out of my possession or altered after they were taken.

Given under my hand and seal this 27th day October, 1868.

[SEAL.] THOMAS E. LEUTZ,
Clerk County Court Meigs County.

(Endorsed:) No. 209. Thomas Shirley vs. Peter Monger. Deposition. Rec'd this deposition from the P. O. at Knoxville, on the 30th Oct., 1868, 12 m., and then opened and filed the same in my office.

M. L. HALL, *Clerk.*

Interrogatories to be propounded to James Daniel.

In the circuit court of the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Interrogatories to be propounded in behalf of the complainant to James Daniel, of Pike County, Georgia; his answers, when obtained, to be read as evidence on the hearing of the above-entitled cause.

Interrogatory 1st. When and where did you form the ac-
152 quaintance of Thomas Shirley, the complainant?

Interrogatory 2nd. What was his condition of health at that time?

Interrogatory 3rd. Were you employed to wait upon Mr. Shirley, the complainant; if so, when did you begin and when did you cease to wait upon him?

Interrogatory 4th. How do you know that you staid with and waited on him till the 16th December, 1863?

Interrogatory 5th. Were you with Mr. Shirley on the 15th December, 1863; if you were, was he able to sit up or transact business on that day?

Interrogatory 6th. Did he transact any business on that day? If you say he did not, state the reasons for your saying so.

153 Cross-interrogatories in behalf of defendant.

1. Did you know one John W. Westmoreland; and if so, when and where did you know him?

2. If you knew of any dealings or transactions between John W. Westmoreland, or any one acting in his behalf and the defendant, Peter Monger, please state when and where they occurred, what was their nature, and all you know about them?

3. State any other facts or circumstances that may be in your knowledgd relative to this case?

THO'S A. R. NELSON,
Sol. for Resp't.

Deposition of James Daniel.

In the circuit court of the United States in and for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

The deposition of James Daniel, witness for the complainant in the above case, taken upon interrogatories, on the 23d day of November, A. D. 1868, at Zebulon, in the State of Georgia, in the absents of
154 both parties.

The said witness, James Daniel, aged 23, being first duly sworn according to law, deposed as follows:

Interrogatory 1st. I formed the acquaintance Thomas Shirley, the complainant, the first of December, 1863, at Tunnell Hill, Georgia.

Interrogatory 2d. His condition of health was very bad; he was confined to his bed; very sick.

Interrogatory 3d. I was emploid to wait on Mr. Shirley, the complainant; I commensed waiting on Mr. Shirley the 7th of December, 1863, and ceast waiting on him the 16th of December, 1863.

Interrogatory 4th. I know I staid and waited on Mr. Shirley till the 16th of December, 1863, from the fact I got a furlow on
155 the 16th to gou home, and I left him on that day.

Interrogatory 5th. I was with Mr. Shirley on the 15th December, 1863; he was not able to set up, neither was he able to transact any business on that day.

Interrogatory 6th. He did not transact any business on that day, for the fact I was with him on that day, and he was not able to set up; if they had been any business transacted between Mr. Shirley and any one I would have known it, from the fact I was with him all day on the 15th, and *know* man, only myself, was with him; I left Mr. Shirley on the 16 December, 1863.

Cross-interrogatory 1st. I do not know one John W. Westmoreland.

Cross-interrogatory 2d. I do not know of any dealing nor
156 transaction between John W. Westmoreland nor any one acting in his behalf, nor the defendant, Peter Monger, and consequently I don't know anything about John W. Westmoreland nor Peter Monger.

Cross-interrogatory 3rd. I don't know of any fact nor circumstance in the case; all I know is what I have stated about Mr. Shirley.

JAMES DANIEL.

The foregoing deposition *were* taken before me, as stated in the caption, and reduced to writing by E. M. Eppinger; and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and put them in the post office, without being out of my possession or altered after they were taken.

Given under my hand this the 23*st* day of November, 1868.

E. M. EPPINGER,
Justice of the Peace in and for Pike County,
in the State of Georgia.

157 (Endorsed:) Rec'd this package from P. O. at Knoxville, Tenn., sealed up, which was then opened by me, & filed Dec. 23, 1868. M. L. Hall, cl'k.

Subpœna to testify.

STATE OF TENNESSEE, *Bradley County:*

To the sheriff of Hamilton Co., Tenn.:

You are hereby commanded to summon A. B. Connor to appear at the office of the clerk & master of the chancery court at Cleveland, the 4th day of January, 1869, to testify and the truth depose in a suit pending in the U. S. circuit court for the eastern district of Tennessee, wherein Thomas Shirley is plaintiff, and Peter Monger & others are defendants, on behalf of plaintiff. Herein fail not, and have you then & there this writ.

Witness A. J. White, clerk & master of said chancery court, at office in Cleveland the 30th December, 1868.

A. J. WHITE, *C. & M.*

(Endorsed:) No. . Sub. to testify. Thomas Shirley v. Peter Monger et al. Issued 30th Dec'r, 1868. A. J. White, C. & M.

I acknowledge servi*s* of the within subpon*e* this the 4th day of January, 1869.

A. B. CONNER.

158 *Deposition of A. B. Conner.*

In the circuit court of the United States for the eastern dist. of Tennessee.

THO'S SHIRLEY
vs.
PETER MONGER ET AL.

Deposition of A. B. Conner, witness for the plaintiff, taken by consent, before A. J. White, clerk & master of the chancery court of Bradley County. Formal caption waived.

The said witness, of lawful age, being duly sworn, deposes as follows:

Ques. 1. Are you acquainted with Peter Monger and Rob't G. Campbell, the respondents in this cause, and are you acquainted with one Joseph G. Ritchie of Hamilton Co., Tenn.?

Answer. I am acquainted with the parties.

Ques. 2. Please state all you may know about the friendship and in-

timacy that existed between Peter Monger, Rob't G. Campbell, and Jos. G. Ritchie in 1865, 1866?

159 Ans. So far as I know, they were friendly; I know nothing to the contrary, if they were not, in 1865 & '6.

Ques. 3. Was it generally reported and understood in their neighborhood and among their acquaintances, that they were friendly?

Ans. I never heard anything to the contrary, but what they were friendly; if I ever heard anything to the contrary, I do not recollect it.

And further this deponent saith not.

A. B. CONNOR.

The foregoing deposition was taken before me, as stated in the caption, & the answers reduced to writing by me; & I do certify that I am not interested in the cause, or of counsel or of kin to either of the parties, and that the same has not been out of my possession, or

160 altered since taken, and that I sealed it up, & placed it in the post office in Cleveland, Tenn., addressed to the clerk of Federal court at Knoxville, Tenn.

Given under my hand at office in Cleveland, Tennessee, the 6 January, 1869.

A. J. WHITE, *C. & M.*

(Endorsed:) Deposition of A. B. Connor. Thomas Shirley v. Peter Monger et als. Rec'd this deposition, sealed up, at post office, Knoxville, Tenn., Jan'y 7, 1869; then opened & filed by me. M. L. Hall, clerk.

Notice of taking depositions.

In the circuit court of the United States for the eastern district of Tennessee, at Knoxville, Tenn.

THOMAS SHIRLEY
vs.
PETER MONGER.

PETER MONGER, Esq.:

Take notice that, on Friday, the 5th March, 1869, at the clerk & master's office in Harrison, Tenn., and continuing day to day till taken, I will proceed to take the depositions of David N. McGill, John W. Watkins, Joseph Moore, to be read as evidence in the above-recited cause in behalf of plaintiff, when read, where you can attend & cross-examine.

THOMAS SHIRLEY,
By atto', R. M. EDWARDS.

161 (Endorsed:) Service of the within notice is hereby acknowledged. Feb'y 27, 1869.

D. M. KEY,
Attor' for Def't.

Subpœna to testify.

State of Tennessee to the sheriff of Hamilton County, greeting:

You are hereby commanded to summon David N. McGill, John W. Watkins, & Joseph L. Moore to appear at the office of the clerk & mas-

ter of the chancery court at Harrison, on the 5th day of March, 1869, to testify and give evidence in the case of Thomas Shirley v. Peter Monger, now in Federal court at Knoxville, Tenn.

Witness A. P. Hunter, clerk & master of said court, at office in Harrison, the 2d day March, 1869.

A. P. HUNTER, *C. & M.*

(Endorsed:) No. . Subpo. to testify. Case, Thomas Shirley v. Peter Monger. Issued 2d March, 1869. A. P. Hunter, C. & M.

Executed on J. L. Moore & John W. Watkins, and D. N. McGill not to be found, this 2d day of March, 1869.

J. J. ALLEN, *Const.*

162 *Subpœna to testify.*

STATE OF TENNESSEE, *Hamilton County:*

In chancery court at Harrison, Tennessee.

To the sheriff of said county:

You are hereby commanded to summon David N. McGill to appear at the office of the clerk & master of the chancery court at Harrison, on Thursday, the 11th day of March, 1869, to testify and give evidence in a cause now pending in the Federal court at Knoxville, Tennessee, wherein Thomas Shirley is complainant, and Peter Monger is respondent. Summoned on behalf of the complainant.

Herein fail not, and have you then and there this summons, with due return thereon made, showing how you shall have executed the same.

Witness A. P. Hunter, at office in Harrison, this 8th day of March, 1869.

A. P. HUNTER, *C. & M.*

(Endorsed:) No. . Subpœna for witness D. N. McGill. Thomas Shirley v. Peter Monger. Issued 8th March, 1869.

Came to hand the 9 of March, 1869, & executed on D. N. McGill the 10th March, 1869.

W. H. BEAN,
Dep. Sheriff.

163 *Depositions of Jno. W. Watkins, D. N. McGill, & Nelson Little.*

In the circuit court of the United States at Knoxville, Tenn., for the eastern district of Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Depositions of John W. Watkins, witnesses for the plaintiff in the above case, taken upon notice, on the 5th day of March, 1869, at the office of the clerk & master of the chancery court at Harrison, in the State of Tennessee, in the presence of R. M. Edwards, attorney for plaintiff, and D. M. Key, attorney for defendant, Monger.

The said witness, JOHN W. WATKINS, aged thirty-two years, being duly sworn, deposed as follows:

Question 1st, by pl'ff's attorney. Are you acquainted with the parties to this suit; if so, how long have you known them?

Answer. I am acquainted with the parties to the suit, and have been acquainted with them twenty years.

164 Question 2d, by same. Were you about Harrison in the month of March or April, 1864; if so, do you know anything of the defendant, Peter Monger, purchasing a note from one John W. Westmoreland for ten thousand dollars? If so, state all you may know about it.

Answer. I was not in this county during the month of March or April, 1864. I do not know anything of the purchase of the note mentioned.

Question 3rd. Were you present in the month of June, 1868, at the house A. P. Hunter or in vicinity of Harrison, when there was a consultation between D. C. Trewhitt and Joseph G. Richey? If so, state who was present.

Answer. I was there, but I did not hear any conversation between Trewhitt & Richey. It was at Mr. A. P. Hunter's. Myself and

165 David N. McGill were at the fence, and Richey & Trewhitt walked off, and what conversation D. C. Trewhitt & Joseph G. Richey had I did not hear.

Question 4. Please to state what time of day this meeting took place, as near as you can, and what day of the week & month, if you can.

Answer. It was after night awhile, not more than eight o'clock, I reckon. I believe it was on Saturday night, but do not recollect the precise date of the month.

Question 5th. Please to state how long Trewhitt & Richey *was* in consultation.

Answer. I do not know. Myself and Henry Jones left there and came on to town; they were still in consultation when we left.

166 Question 6th. State, if you remember the fact, if this was after said Richey had escaped from jail at Chattanooga.

Answer. Yes, sir; it was.

Question 7th. Please to state who was sent for Richey, and whether or not you brought him to that meeting.

Answer. I do not know that anybody was sent for him. I was coming from the Montgomery farm, and saw him sitting by the side of the road, & he asked me to get off my horse and talk with him. After some conversation we came on together. When we came to the forks of the road, and Henry Jones came up, and, after some talk, we all came on together to A. P. Hunter's, Richey saying he was going to Ad. Hunter's. He did not say who he was going to see, and just remarked that he was here on business, and when he got through he was going to leave.

167 Question 8th. Did you see Richey when on your way to the Montgomery farm; if so, what conversation did you have with him?

Answer. Yes, sir; I saw him on the way. The conversation was just in regard to bad feelings he had towards men in this country; & I told him to let that alone, and he had better go away and stay away.

Question 9. Had you seen D. C. Trewhitt & Peter Monger in Harrison on that day, before going out to the Montgomery farm?

Answer. No, sir.

Question 10th. Did you see Peter Monger that night or during the day; if so, where?

168 Answer. I saw him in town that night, after I left Hunter's house.

Question 11th. Did you have any conversation with him about Richey; if so, what was said?

Answer. I do not know that I had any conversation about Richey with him.

Question 12th. Had you been in Harrison during the day, and had you seen D. C. Trewhitt, R. G. Campbell, and Peter Monger, or either of them before going up to the Montgomery farm?

Answer. No, sir; I had not seen either of the men, but had been in town in the morning.

Question 13th. Please to state if you have ever seen said J. G. Richey at any time since that evening; if so, where, and who were present?

169 Answer. No, sir; I have not.

Question 14th. Had you any information that D. C. Trewhitt desired to see said Richey on that evening; if so, from whom did you get such information?

Answer. I had no such information.

Question 15th. Were you acting as deputy sheriff of Hamilton County at the time you came with him riding to Mr. Hunter's?

Answer. I was, sir.

Question 16th. Please to state if Peter Monger, R. G. Campbell, & D. C. Trewhitt were not intimately friendly with J. G. Richey up to the time of the institution of the above-mentioned suit?

170 Answer. I do not know whether they were or not.

Further deponent saith not.

JOHN W. WATKINS.

The taking of these depositions is continued over to the 11th of this month by consent of parties.

A. P. HUNTER, *C. & M.*

MARCH 11TH, 1869.—Met pursuant to adjournment.

Deposition of D. N. McGill.

DAVID N. MCGILL, aged forty-two years, being duly sworn, deposed as follows:

Question 1st, by compl'ts sol. Are you acquainted with the parties to this suit, & how long have you known them?

Answer. I am; have known them for twenty years.

Question 2d, by same. Have you any knowledge of the original
171 transaction out of which this suit was instituted? Did you ever see the note upon which Monger obtained judgment against Shirley?

Answer. I have no knowledge of the transaction; I never saw the note.

Question 3d. Did you ever hear Peter Monger say where, how, and from whom he obtained the note?

Answer. I don't think I ever did; if I have, I have forgotten it.

Question 4th. Are you acquainted with Joseph G. Richey, a witness in behalf of complainant?

Answer. I am.

Question 5. Were you at any time employed to go after Richey
172 and bring him to this country; if so, when was it, and where did you find him, and did you bring him into the country?

Answer. I never was employed to go after him; no, sir; I did not

bring him. I was at his house in June or July, 1868, in Grainger County, Tenn., and Richey came down on the train that I was on.

Question 6th. Please to state if Peter Monger & D. C. Trewhitt had any conversation with you before going up to Richey's; if so, where was it?

Answer. My recollection is, that Peter Monger had none; Judge Trewhitt had, at Chattanooga.

Question 7th. Was Peter Monger present at the time of this conversation?

173 Answer. He was not; me and him went to Judge Trewhitt's, and Monger went out when me and Trewhitt had the conversation.

Question 8th. Please to state if you had been sent for to go to Chattanooga at that time. If so, who went after you, and by whom sent?

Answer. I was sent for. Mr. Pearson came for me. He said, they want you to go to Chattanooga, without fail to-night. He did not say who, as I recollect.

Question 9. To whom did Mr. Pearson take you, on arriving in Chattanooga?

Answer. I went to his father's house—A. A. Pearson.

Question 10. Was Peter Monger there when you got there?

174 Answer. I think he was.

Question 11th. Did Mr. Monger say anything to you about going after Richey, or going to see him? If so, state all he said.

Answer. My recollection is, that the only conversation Monger had with me was, that he told me Judge Trewhitt wanted to see me.

Question 12th. Did he go with you to Judge Trewhitt's from Pearson's; and on the way, or at any other time or place, did he say anything to you about going to see Richey? If so, state all he said.

Answer. I think he did go with me to Judge Trewhitt's. He said nothing until after Trewhitt and me had talked, and he had said he wanted me to go for Richey.

175 Question 13th. Please to state the purport of the conversation between you and Judge Trewhit at that time.

Answer. Judge Trewhitt told me that Key had received a notice at Knoxville to take Joe Richey's deposition, and had sent him (Trewhitt) a copy of the interrogatories, and he wanted me to take them up to Richey's, and see if he would answer them, and how. He gave me the intorrogatories, and I took them with me. We had other conversation, but I don't think it was on that subject. I understood that Trewhitt was Monger's counsel. I believe he also asked me if I had any money to bear my expenses. I told him what money I had, and do not recollect how much. He then went out to where Esq'r Monger was, and told him he must get me some money to bear my expenses. Monger got what money I wanted. I don't recollect how much; it was what was supposed would bear my expenses. Monger and myself had some conver-

176 sation about the amount of money it would take to bear my expenses—was about all the conversation I recollect of having with Monger that night.

Question 14th. Please to state if Peter Monger or Judge Trewhitt desired you to try to get Richey to come down to Hamilton County?

Answer. Neither of them said anything to me about it.

Question 15th. Did either of them urge you to be in a hurry about seeing Richey? If so, what reason was urged for it?

Answer. I think that Judge Trewhitt said that the day was set to

take his deposition, and he would like for me to be there that day.

177 Question 16. You have stated that Richey came down on same train with you. Please state where he got off the train, and did you go on to Chattanooga, & on arriving there did you see Judge Trewhitt, Peter Monger, and R. G. Campbell there; & if so, did you notify them, or either of them, that Richey was in the county?

Answer. Richey got off the train at Ooltowah, and I went on to Chattanooga. I saw Judge Trewhitt and R. G. Campbell; Peter Monger was not there. If he was I did not see him. I told Judge Trewhitt that Jo. Richey was in the county. I don't recollect that I told Campbell till next day. I told him that Joe came down with me.

Question 17th. Please to state if you told Judge Trewhitt anything about where he might likely see Richey?

178 Answer. Richey told me he wanted to see Judge Trewhitt, and where to meet him, and I told him accordingly.

Question 18th. Where was the place of meeting, and did you come with Judge Trewhitt to the place? If so, who besides yourself and Judge Trewhitt were along?

Answer. He was to come to Harrison, but Judge Trewhitt went to Mr. A. P. Hunter's, near Harrison, and near his house had a talk with Richey. I did not come up with Judge Trewhitt. R. G Campbell came with me to Harrison.

Question 19. Did you hear the conversation between Judge Trewhitt and Richey on that occasion?

Answer. I heard part of it; I did not hear it all.

Question 20th. State what you recollect?

179 Answer. I heard Richey ask Judge Trewhitt if he thought he could come back here to Harrison, or in 16 or 17 miles of here, and live. Trewhitt told him he did not think he could. Trewhitt then asked him if he had ever seen or knew anything about the Shirley note. Richey replied, he had never seen it, nor knowed nothing about it. They then had a conversation to themselves, but I did not hear it. The above is about all the conversation I recollect of hearing between them.

Question 21st. Please to refresh your recollection and state whether or not you heard Trewhitt persuade Richey to leave the country?

Answer. I don't think he did. I think Richey told Trewhitt that he would leave the country if he (Trewhitt) said so.

180 Question 22d. Was Peter Monger in Harrison during that day and night, & if so, was he apprised of the fact that Richey was in the neighborhood?

Answer. He was in Harrison that night. Was here when I came up from Chattanooga, I think. He told me, when I came up, that Richey was in the country. He told me that he had had a difficulty with Jo. Moore that morning. Then I told Monger that he came down with me.

Question 23rd. Please to state whether or not Peter Monger, Dan'l C. Trewhitt, and R. G. Campbell, were or were not on terms of most intimate friendship with Richey up to the time of Richey's first arrest? State how the fact is.

Answer. I can't state that as to Monger. Mr. Campbell & Judge Trewhitt were friends to Richey, at least they so expressed themselves to me. At the time Richey had his trial here I did not think Camp-

181 bell had any disposition to befriend him any way.

Question 24th. Did you, when on the way up to Harrison with R. G. Campbell, talk about Richey being in the county and did he remain in Harrison till Richey arrived, and did he see him; was any sent out for Richey; if so, who?

Answer. We did talk about Richey being in the county as we came up; he did not stay in Harrison till he (Richey) came in; he went back; he did not see him at that time; I don't recollect of any one being sent out for Richey.

Cross examination by W. L. Eakin, sol'r for respondent:

Quest. 1st. Did you show the interrogatories you had to Joe Richey, or read them to him?

Ans. I did show them to him.

182 Ques. 2, by same. What did he tell you in regard to his knowledge of the matters referred to in these interrogatories at that time, and what his answers would be?

Ans. (Complainant excepts to this question and answer thereto. Exception overruled and an appeal to the court.—A. P. HUNTER, *Clerk & Master.*)

Answer. He told me that he knew nothing about that note, that he had never seen it. If Edwards, or anybody else came to his house to try to get him to swear to that, he would kill him.

Ques. 3, by same. State whether or no you used any means or made promises to him to induce him to tell anything but the truth in regard to the matters in controversy so far as he knew—

Ans. I did not.

183 Ques. 4th, by same. Did you advise him not to use any violence towards any one who might desire his deposition in this cause?

Ans. I did.

Ques. 5th, by same. Did you hear chancelor advise Richey as to remaining on Clinch Mountain at the time they met at Hunter's near Harrison; & if so, state all he said?

Ans. Trewhitt told him that he thought he (Richey) would be perfectly safe there, and advised him to be quiet and behave himself, and after three or four years he thought he might come back here & live, if he behaved himself.

Ques. 6, by same. Had you been well acquainted with Richey before you saw him on Clinch Mountain?

Answer.

184 Ques. 7, by same. How long had you known him?

Ans. I do not know exactly, but had known him for several years—pretty much all his life.

Ques. 8, by same. Did you have any other conversation with Richey in regard to the Shirley note said to have been bought by Monger?

Ans. I don't now recollect that I did; I think I have heard him talk about it at other times—perhaps as we came down.

And further this deponent sayeth not.

D. N. McGILL.

Sworn to and subscribed before me this 11th March, 1869.

A. P. HUNTER, *C. & M.*

Deposition of Nelson Little.

NELSON LITTLE, aged fifty years, being duly sworn, deposed as follows:

185 Question 1st, by compl't's sol. Are you acquainted with parties to this suit?

Answer. I am. I have known them ever since 1841.

Question 2d. Did you ever see the note on which Monger brought suit against Shirley for ten thousand dollars?

Answer. I never did.

Question 3rd. Did you ever hear Monger make any statement about

where and from whom he got the note; if so, state where he said the man was from, where he lived, & all he said about it?

Answer. All I remember about it, Esq. Monger came to my house and asked if Judge Trewhitt was at home. I told him I thought he was, & he said he had a chance to buy a note on Thomas Shirley for ten
186 thousand dollars in confederate money, and asked me what I thought about it. I told him I thought I would do it; I had asked him who had it, or who it was payable to, & he said a man by the name of Westmoreland from Middle Tennessee, I think. In the time Judge Trewhitt came in and Monger asked him about it, and also about what his opinion was about the confiscation law; and Trewhitt advised him to buy it, saying he did not believe the confiscation law would take it out of his hands. I don't recollect exactly what time this was, but Trewhitt had quit the army some time before that. Monger said he supposed the man Westmoreland, was the same man who had brought to Shirley a lot of stock, negroes, cattle, & sheep, from some place over that way. This was in reply to a question from me, asking what Shirley gave such a note as that for.

Cross examination by W. L. Eakin, sol'r:

187 Ques. 1st. Did Monger say this note was given for this property, or did he only give it as his opinion that this note might have been given for this property?

Ans. He only gave it as an opinion that the note might have been given for this property. He said, you know this property Shirley had at one time, but I only knew about the property by rumor.

And further deponent saith not.

his
NELSON + LITTLE.
mark.

Sworn to and subscribed before me this 11th March, 1869.

A. P. HUNTER, *C. & M.*

STATE OF TENNESSEE, *Hamilton County:*

CLERK & MASTER'S OFFICE, *March 11th*, 1869.

I, A. P. Hunter, clerk & master of the chancery court at Harrison, Hamilton County, Tennessee, do certify that the foregoing depositions were taken before me, as stated in the caption, and reduced to writing by the attorneys on each side of the case, by consent of all the parties. I certify that I am not interested in the cause, nor of kin or counsel to
188 either of the parties, and that I sealed them up and delivered them to the postmaster, without being out of my possession or altered after they were taken.

Given under my hand the day and date above written.

[SEAL.] A. P. HUNTER, *C. & M.*

Bill cost.

Clerk & master, A. P. Hunter, taking 3 depositions	3 00
3 witnesses 1 day each, $1 00	3 00
1 subp. 3 witnesses to testify	45
Alias subp. to McGill	25
1 seal office	50
Postage	12
Cost, Allen, sum'g 2 wit's, 50	1 00
W. H. Bean, dept. sh'ff, 1 witness	50
Bill cost	$8 82

(Endorsed:) No. Thomas Shirley vs. Peter Monger. The deposition of John W. Watkins, David N. McGill, & Nelson Little. Rec'd this package from the post office at Knoxville, Tennessee, sealed up, March 15, 1869; & then opened by me & filed. M. L. Hall, clerk.

RESPONDENT'S TESTIMONY.

189 *Interrogatories for R. M. & Eliza Williamson.*

In the circuit court of the United States at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Interrogatories propounded by the respondent to Robert M. Williamson and Eliza Williamson, his wife, residents of Whitefield County, in the State of Georgia, whose testimony when taken will be read on the trial of the above-named cause.

Int. 1st by respondent Monger. What is your age and residence, and how long have you resided there or in the neighborhood?

Int. 2nd. Are you acquainted with the complainant, Thomas Shirley? If so, when did you become acquainted with him?

Int. 3. Did said Thomas Shirley ever board at your house? If so, at what time, and how long? Have you any book or books showing
190 when he came, and when he left? If so, copy the entries from your books. How far do you live from Tunnell Hill, Georgia? What was Shirley's condition as to health and strength whilst at your house? Was he at your house on the 15th December, 1863? When were the entries you have mentioned made in your books?

Cross-interrogatories to be propounded in behalf of complainant.

1st. Did Shirley buy or have any property with him while he was at your house? If so, what sort of property; how much was it worth; and who did he purchase it from; and how did he pay for it?

2nd. If you say you have any book containing entries of dates, &c., showing when Shirley was at your house, or tending to show such fact, or refresh your recollection in regard thereto, attach said book to and make it a part of your deposition?

191 3d. Has Monger, or any one for him, conferred with you, or either of you, in relation to what you would swear in this cause? If so, when and where, and what was said between you?

4th. Do you know, or did you ever know a man by the name of John W. Westmoreland? If so, when did you know him? When did you last see him? Where did he live? Where does he live now? What is his age, size, & general description? Was he at your house, and did he make any trade with Thomas Shirley, when the latter was at your house, or at any other time? If so, what sort of a trade was it?

BAXTER,
Atto. for Complainant.

(Endorsed:) Interrogatories for R. M. & Eliza Williamson. Thomas Shirley vs. Peter Monger.

where and from whom he got the note; if so, state where he said the man was from, where he lived, & all he said about it?

Answer. All I remember about it, Esq. Monger came to my house and asked if Judge Trewhitt was at home. I told him I thought he was, & he said he had a chance to buy a note on Thomas Shirley for ten
186 thousand dollars in confederate money, and asked me what I thought about it. I told him I thought I would do it; I had asked him who had it, or who it was payable to, & he said a man by the name of Westmoreland from Middle Tennessee, I think. In the time Judge Trewhitt came in and Monger asked him about it, and also about what his opinion was about the confiscation law; and Trewhitt advised him to buy it, saying he did not believe the confiscation law would take it out of his hands. I don't recollect exactly what time this was, but Trewhitt had quit the army some time before that. Monger said he supposed the man Westmoreland, was the same man who had brought to Shirley a lot of stock, negroes, cattle, & sheep, from some place over that way. This was in reply to a question from me, asking what Shirley gave such a note as that for.

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Ans. He only gave it as an opinion that the note might have been given for this property. He said, you know this property Shirley had at one time, but I only knew about the property by rumor.

And further deponent saith not.

his
NELSON + LITTLE.
mark.

Sworn to and subscribed before me this 11th March, 1869.

A. P. HUNTER, *C. & M.*

STATE OF TENNESSEE, *Hamilton County:*

CLERK & MASTER'S OFFICE, *March 11th*, 1869.

I, A. P. Hunter, clerk & master of the chancery court at Harrison, Hamilton County, Tennessee, do certify that the foregoing depositions were taken before me, as stated in the caption, and reduced to writing by the attorneys on each side of the case, by consent of all the parties. I certify that I am not interested in the cause, nor of kin or counsel to
188 either of the parties, and that I sealed them up and delivered them to the postmaster, without being out of my possession or altered after they were taken.

Given under my hand the day and date above written.

[SEAL.] A. P. HUNTER, *C. & M.*

Bill cost.

Clerk & master, A. P. Hunter, taking 3 depositions	3 00
3 witnesses 1 day each, $1 00	3 00
1 subp. 3 witnesses to testify	45
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1 seal office	50
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RESPONDENT'S TESTIMONY.

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In the circuit court of the United States at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

Interrogatories propounded by the respondent to Robert M. Williamson and Eliza Williamson, his wife, residents of Whitefield County, in the State of Georgia, whose testimony when taken will be read on the trial of the above-named cause.

Int. 1st by respondent Monger. What is your age and residence, and how long have you resided there or in the neighborhood?

Int. 2nd. Are you acquainted with the complainant, Thomas Shirley? If so, when did you become acquainted with him?

Int. 3. Did said Thomas Shirley ever board at your house? If so, at what time, and how long? Have you any book or books showing
190 when he came, and when he left? If so, copy the entries from your books. How far do you live from Tunnell Hill, Georgia? What was Shirley's condition as to health and strength whilst at your house? Was he at your house on the 15th December, 1863? When were the entries you have mentioned made in your books?

Cross-interrogatories to be propounded in behalf of complainant.

1st. Did Shirley buy or have any property with him while he was at your house? If so, what sort of property; how much was it worth; and who did he purchase it from; and how did he pay for it?

2nd. If you say you have any book containing entries of dates, &c., showing when Shirley was at your house, or tending to show such fact, or refresh your recollection in regard thereto, attach said book to and make it a part of your deposition?

191 3d. Has Monger, or any one for him, conferred with you, or either of you, in relation to what you would swear in this cause? If so, when and where, and what was said between you?

4th. Do you know, or did you ever know a man by the name of John W. Westmoreland? If so, when did you know him? When did you last see him? Where did he live? Where does he live now? What is his age, size, & general description? Was he at your house, and did he make any trade with Thomas Shirley, when the latter was at your house, or at any other time? If so, what sort of a trade was it?

BAXTER,
Atto. for Complainant.

(Endorsed:) Interrogatories for R. M. & Eliza Williamson. Thomas Shirley vs. Peter Monger.

Deposition of R. M. Williamson.

STATE OF GEORGIA, *Whitfield County:*

THO'S SHIRLEY
vs.
MONGER.

Interrogatories to be propounded to ROB'T M. WILLIAMSON,
192 who, having come before me, and been duly sworn, answers as follows:

To the first direct int. he answers as follows:

Int. 1st. My age is 44 years old; my residence is Whitfield County, State of Georgia, & have resided in the same neighborhood about 20 years.

Int. 2nd. I am acquainted with complainant. I became acquainted with him some time in Dec'r, 1863. He came to my house, & staid all night.

Int. 3d. He did board at my house the 30th day of Dec'r, 1863. He commenced boarding at my house about 20 or 25 days. I have books showing when he came, & when he left my house. I live 3½ miles from Tunnell Hill. His condition as to health & strength was very bad, barely able to walk about. Towards the last his health improved.

193 Not, unless it was the night he staid all night at my house; I do not remember the precise day; they were made right at the time when he was at my house.

Answers to cross int. in behalf of complainant:

1st. He came there with one horse; then his family came on the 10 day of Jan., 1864; they brought 2 horses & a wagon with them, and some bedding. The whole of the property would not be worth over two hundred & fifty dollars in the present currency. I can't tell who he purchased it from; do not know how he paid for it.

2d. I have, & will attach that part of my book containing those entries.

3d. Monger came to my house about 2 months ago for the purpose of finding out if Shirley had boarded at my house. After referring to my book, I told that he had.

194 4th. I do not know anything about John W. Westmoreland, or any of the questions asked in the 4th int.

R. M. WILLIAMSON.

Sworn to & subscribed before me this 4th Jan., 1870.

S. J. WARD, *J. P.*

Exhibit to R. M. Williamson's deposition.

Copy of leaf from book attached to R. M. Williamson's deposition.

1'63. Com'enct bo'rding Shirley and horse, Dec. 30, on Wednesday, up to Sunday *nite*, January 10, 1'64, making 12 days; then I fed 3 horses 1 week, about 20 *yeares* a day, & 10 bundles of fodder 2 weeks,

2 pens.	Corn.		Fodder.	
Monday: 2 horses.....	20	.....	3	.....fodder
Tuesday: 2 horses.....	20	.....	3	.....more..2
Wednesday: 2 horses....	30	.....	4	.....
Thursday: 2 horses.....	14	.....	2	.....
Friday: 2 horses.....	10	.....	2	.....
Saturday:	14	.....	2	.....
Sunday:		.....	2	.....

195 STATE OF GEORGIA, *Whitfield County:*

I hereby certify that the foregoing depositions were taken before me at my office in Tunnel Hill, Geo.; and that I am not council for either party, nor not interested in the result of said suit, & that I am not connected to either party in said suit, and that the answers were taken in my own handwriting, & that they have not been out of my possession, and that the answers have not been changed since they were signed, and that I will deliver them to the U. S. post office, directed to the clerk of the U. S. district court for the dist. of E. Tenn., at Knoxville, Tenn., this Jan. 4th, 1870.

S. J. WARD, *J. P.*

Subpœna to testify.

THE UNITED STATES OF AMERICA,
District of East Tennessee:

THOMAS SHIRLEY
vs.
PETER MONGER.

To the sheriff of Hamilton County, greeting:

196 You are hereby commanded to summon R. G. Campbell, D. C. Trewhitt, D. N. McGill, Henry S. Jones, Samuel McCaleb, R. H. Guthrie, Wesley Davis, David A. Bell, C. W. Vinson, William R. Davis, Rufus Hall, T. R. Elliott, C. D. Luttrell, and A. G. W. Puckett, to appear before me, a United States commissioner of circuit court for East Tennessee, at the office of Key, Eakin & Key, in Chattanooga, on the 2d day of November, 1868, to give evidence for the defendants in the above-entitled cause. Herein fail not under the penalty prescribed by law.

Witness D. J. Duffy, commissioner as aforesaid, at office in Chattanooga, this Oct. 12th, 1868.

DAN. J. DUFFY,
U. S. Com., &c.

(Endorsed:) No. —. Subpœna to testify. Thomas Shirley vs. Peter Monger. Issued Oct. 12th, 1868. Dan. J. Duffy, U. S. com., &c.

Came to hand same day issued, and this day executed on D. C. Trewhitt, C. W. Vinson, Wesley Davis, and R. G. Campbell, this the 16th day of October, 1868.

W. ROGERS, *D. Sh'ff.*

197 Came to hand the 16th day of Oct., 1868; executed on R. H. Guthrie, A. G. W. Puckett, H. S. Jones, D. N. Bell, T. R. Elliott, this the 31st day of Oct., 1868.

J. W. WATKINS, *D. Sh'ff.*

Notice of taking depositions.

In the United States circuit court at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

I will take the depositions of Robert G. Campbell, D. C. Trewhitt, D. N. McGill, Henry S. Jones, Samuel McCaleb, R. H. Guthrie, Wesley Davis, David N. Bell, C. W. Vinson, William R. Davis, Rufus Hall, T. R. Elliott, C. D. Luttrell, A. G. W. Puckett, at the law office of Key, Eakin & Key, in Chattanooga, Hamilton County, Tennessee, on the 2d day of November, 1868, and continue the same from day to day until completed, to be read as evidence on the trial of the above-stated cause.

PETER MONGER,
By D. M. KEY, *Atto.*

(Endorsed:) Notice to take depositions. Tho's Shirley vs. Peter Monger.

198 Thomas Shirley being a resident of the State of Georgia, I served a copy of the within notice, or rather handed a copy of it, to R. M. Edwards, his attorney, at Cleveland, Tennessee, this 20 day of October, 1868.

DANIEL McDOWELL,
Dep'ty Sheriff of Bradley County.

In the United States circuit court for the eastern district of Tennessee, at Knoxville, Tenn.

THOMAS SHIRLEY
vs.
PETER MONGER.

Depositions of R. G. Campbell, D. C. Trewhitt, D. N. McGill, Henry S. Jones, Sam'l McCaleb, R. H. Guthrie, Wesley Davis, David N. Bell, C. W. Vinson, William R. Davis, Rufus Hall, C. D. Luttrell, A. G. Puckett, and T. R. Elliott, witnesses for the defendant in the above case, taken upon notice, on the 2d day of November, 1868, at the law office of Key, Eakin & Key, in the city of Chattanooga, Tenn., in the presence of R. M. Edwards, attorney for plaintiff, and D. M. Key, attorney for defendant

Deposition of D. C. Trewhitt.

And D. C. TREWHITT, a witness for respondent, being duly sworn deposes as follows:

199 1st quest. What is your age, residence, and office, and how long have you known complainant and respondent?

Ans. Forty-four; Chattanooga, Tenn.; residence & office, that of chancelor 2d div., Tennessee; I have known both parties twenty years or more.

2nd quest. How long have you been chancellor?

A. From June, 1864.

3rd quest. State all the knowledge you have about the note or alleged

note under which complainant's lands were sold and purchased by defendant, out of which this controversy grows—state all you know about this matter from beginning to end.

I came to Harrison in Feb'y, 1864, from the army, re-established
200 my office in Harrison, Tennessee—in last of February or 1st days of March, 1864. Peter Monger, respondent, came to me, as an attorney, and told me that there was a note of ten thousand dollars on Thomas Shirley, the complainant, and was offered to him in market, or words to that import—that he could buy it but did not wish to buy it if the U. S. confiscation laws would or could be enforced. I told him I was of opinion that the confiscation law was constitutional, but I did not believe the Government would enforce the law, but to come in in a few days, I would examine all the authorities I had, which I did, and in a few days he came in. I then told him I was of the same opinion, but if he could purchase on good terms I advised him to do so. He then went off to D. N. Bell to get a portion of the money, as he said, but Bell wanted an interest and he declined to take the money from Bell, and said he was going to get money from William Rogers. Sometime thereafter he came to me and told me that he had got the money and
201 made the purchase and wanted suit brought thereon. The courts were not then fully reorganized. I advised him it was unsafe to then bring suit. But on that day or a few days thereafter I concluded to bring suit by attachment before T. W. Spice, a justice of the peace in Harrison, returnable to the circuit court at Harrison, in order to keep off other supposed attachments against Shirley, which I did, and when courts should be finally opened I would bring suit regularly in the circuit court of Hamilton County, Tenn., which I did about the 6th June, 1864, in which Shirley's property was attached, now the subject-matter of this suit. After suit was brought I was commissioned chancellor, &c., and the case turned over to Hon. A. G. Welcker, then an attorney at the bar at Harrison. I never saw the note. Monger gave me the date of the note, the amount and date & character of the assignment. Judge Welcker obtained judgment in the case and the land in controversy sold, and Monger became the purchaser. I know nothing about the
202 execution of the note in any manner, shape, or form, except as stated.

Quest 4th. Were you acquainted with J. G. Ritchie, who was examined as a witness in this cause; if so, where was he at the time of the interviews you spoke of having had with respondent?

Ans. I am well acquainted with him. My recollection is that he was in Middle Tenn., belonging to the 4th Tenn. Cavalry, or connected with it. If he was in Hamilton County then I do not remember it.

Cross examination:

Question 1st. Did resp't, Monger, tell you, during the interview of which you have spoken, or at any other time, what kind of money he was to give for said note, or had given for it; if so, state all he said on that subject.

203 Answer. I advised him to buy it with confederate money if he could. He afterwards told me that he purchased it with mixed funds—part confederate and part par funds. He further said the holder of the note wanted confederate money for it.

Question 2d. Did resp't state to you at any of these interviews who it was that held the note; if so, who did he say had it? Were you acquainted with the holder; if so, did you see him at any time during the negotiation. If you knew him, please state where he resided then, and,

if you know, state where he resides now, and all you may know about him.

Answer. I never saw the holder in my life that I know of. I know nothing of him at all. I think Monger told me his name was Westmoreland; that he was a stranger to him.

204 Question 3rd. You stated that you re-established your office in Harrison the last of February or 1st March, 1864, and that sometime thereafter Mr. Monger came to you and asked your advice about the purchase. Please give your best recollection as to when you finally advised him to make the purchase?

Answer. I think in the period of one week.

Question 4th. Was this as late as the middle of March, 1864?

Answer. If I am correct as to the time that I re-established my office it was not far from 15th March.

Question 5th. Please state what was the value of confederate money as a commodity at the time you mentioned—15th March, 1864?

205 Answer. I think that some was sold at 10 cents on the dollar. It was, as a general thing, regarded as worthless.

Question 6th. Please state if, at the time you mention, 15 March, 1864, Thomas Shirley's lands were attached or held by any process, or was not the attachment you caused to be issued the first process that was executed on said land?

Answer. I think Monger's was first. If any before, I do not know it.

Question 7th. Did resp't, at any time, make any statement to you as to why the holder of said note preferred confederate currency at ten cents on the dollar to holding Shirley's land liable for the whole debt? If so, stat' it in full.

Answer. No.

206 Question 8th. Did Mr. Monger represent the holder of the note as an acquaintance of his, or as a stranger?

Answer. As a stranger.

Question 9th. Did resp't state to you, at any time, where the holder of the note was staying? If so, with whom did he say, and where?

Answer. He made no statement where he was except that he was in the neighborhood, and offering the note for sale.

Question 10th. Have you since then heard any person in Hamilton County say where the holder of said note was during the time of said negotiation? If so, who, and where did he stay?

Answer. I never did.

Re-examination by respondent:

207 At what time were the courts re-established in Hamilton County, Tennessee, during the late war?

Answer. In the spring & summer of 1864.

Re-cross-examination by compl't:

Question 1st. Did you see Peter Monger in Harrison, in the year 1867, when on his way to Chattanooga, to see compl't? If so, did he call on you for advice in reference to this cause? If so, what did he state to you on the subject?

Answer. I did, at some time—perhaps the time you mention. He said Shirley was in Chattanooga & wanted to see him, and he was going down to see him. I told him to be careful, and not to talk to him, except to him, & when alone. He afterwards told me he did not see him. I told him Shirley was a treacherous man, and give him no advantage.

208 Question 2d. Did you not also state to him, on that occasion, as Monger was leaving you for Chattanooga, that Monger was going to give away a farm you had obtained for him?

Answer. No, sir; nor any such thought entertained. I believed, at the time, that Shirley wanted to get Monger to Chattanooga, and, by fraud, get some person to overhear them talk, and swear, and prove lies upon Monger. I may have told Luttrell, (Caswell,) that Monger would go to Chattanooga, and get drunk, & let Shirley get the advantage of him, and get his land back.

Question 3d. You have been asked about Joseph G. Richey, by compl't. Have you seen him since his escape from prison? If so, in whose presence, and when & where.

209 Answer. I have. I saw him at the house of A. P. Hunter, near Harrison, Tennessee, after his escape. A. P. Hunter and D. N. McGill were present most of the time; the time I do not remember, but some time after his escape.

Question 4th. State if this was in the month of June, 1868, and whether or not R. G. Campbell was not present during a portion of the time?

Answer. It was about that month. R. G. Campbell was not present during any of the time.

D. C. TREWHITT.

D. C. TREWHITT re-introduced for cross-examination:

Question 1st. You have stated in your examination-in-chief that Monger came to you to advise about purchasing the note, the last of February, or in March, 1864, and that you did not then give him
210 a definite answer; that he came again to see you on the subject. Please to state how long between the first and second visits.

Answer. My opinion is that it was on Monday he first came to see me, and on Friday he came again according to my directions to him. I had, during the time, made the examination of the books, as I had promised, & of which I have spoken.

Question 2d. Please to state if at either of these interviews, Monger ever intimated to you at what particular place the pretend' holder of said note was staying during the time he was awaiting your answer on the subject of the law of confiscation, other than that he was in the neighborhood?

Answer. He never did.

211 Question 4th. Are you satisfied from the declarations of Monger, or otherwise, that he had not purchased the note till after this second interview?

Answer. I am.

Question 5th. Please to state how long after you gave the definite advice on the subject, before you instituted the first suit of which you have spoken?

Answer. A very short time—perhaps a week or ten days. I think I caused attachment to be issued in April, 1864.

Question 6th. Has not Peter Monger, admitted to you since that time, that the said John W. Westmoreland was a fiction, and that he had really seen no such man?

Answer. No.

212 Question 7th. Have you resided at Harrison during most of the time since that; and how long before that time had that place been your home; how long has Monger resided in that neighborhood, & how far from Harrison?

Answer. From the year 1852. I have resided at Harrison, nearly all the time, except while in the army. Monger has resided in about four miles of Harrison all the time since 1852.

Question 8th. Were you in Harrison in June & July, 1864? If so, was J. G. Richey there during a portion of that time; was R. G. Campbell there during that time; and did you, at any time during that year, see them together at Harrison, or elsewhere?

Answer. I was there a portion of that time, and do not remember seeing either of them during the time, nor of seeing them together during that year?

213 Question 9. Please to state whether J. G. Richey lived on the Shirley farm during the year 1864? If so, till what time, and on what terms. State all your own information, or what Monger may have stated to you.

Answer. I know only what Richey & Monger told me. Monger said he put Richey on the farm about wheat-sowing time in 1864, and that he remained there till his house was burnt, but I don't know on what terms.

By respondent:

How and by whom was the Shirley house burned? Was that neighborhood subject to raids from rebel guerillas at the time Richey lived there, and was Richey preparing to leave the place, when or before that house was burned?

214 Ans. The house was understood to have been burned by W'm Snow, and a banditti. I have no knowledge of the matter, except such as was derived from the history of the times. My understanding was that Richey was preparing to leave the place before the burning. There were occas'ional raids into the neighborhoods by rebels.

D. C. TREWHITT.

Deposition of R. G. Campbell.

R. G. CAMPBELL, a witness for respondent, being sworn, deposes as follows:

1st quest. by respondent. What is your age? In what county do you reside, and how long have resided in it? In what business are you engaged?

Ans. My age is forty-two years. I reside in Hamilton County, and have resided in said county thirty-five years. I am sheriff of said county.

215 2d quest. What was your office or employment in 1863, '4, and '5, and where were you in the beginning of 1864, up to July of that year, and during the month of July of that year?

Ans. I was an A. Q. M. in the U. S. Army, in the years 1863, '4, & '5. I was in Knoxville or vicinity in the year 1864 from January, 1864, till Sept. '64, with the exception of some leaves of absence from the gen'l hospital in Knoxville.

Quest. 3rd. Were you at any time at respondent's carding-machine with respondent, and one J. G. Richey, or any one else, when a note purporting to be on Thomas Shirley, the complainant, was written or forged? Do you have, or did you ever have, any knowledge of such a transaction?

Ans. No, sir; I never was at respondent's carding-machine or house from 1862 till 1865, and never was at his carding-machine with Richie

in my life, and know nothing of the writing or forgery of a not'
216 at the carding-machine, or any other place.

Quest. 4th. Did you ever have any knowledge of or participation in any transaction of the character mentioned in the foregoing question at Peter Monger's carding-machine or anywhere else, with Peter Monger, or said Monger and Joseph G. Richey, or any one else?

Ans. No, sir; I know nothing of it, and the first intimation I had of it was given me by Geo. O. Cate, while I was in hospital at Knoxville, that there was such a note in existence.

Quest. 5th. Are you related to complainant Thomas Shirley? If so, how? Is George O. Cate related to complainant? If so, how?

Ans. My wife and Thomas Shirley are related. He is her great
217 uncle; that is her mother's uncle. Geo. O. Cate's first wife, who is now dead, was the daughter of Thomas Shirley.

Quest. 6. Are, and have you been, acquainted with the signature and handwriting of complainant *of* Thomas Shirley?

Ans. I think I know Shirley's signature. He was a justice of the peace in the county at one time, and I was a deputy sheriff. I then knew his signature.

Quest. 7. Did you ever see the note on which the respondent, Peter Monger, sued complainant, Shirley, and out of which this controversy grows? If so, state the circumstances and your opinion as to the genuineness of the signature to the note.

Ans. I saw a note. It was sued upon in the court at Harrison against Thomas Shirley in 1865, which, I suppose, was the note in con-
218 troversy. The note was shown me by A. G. Welcker, atto. for Monger. My impression at that time was that it was Thomas Shirley's genuine signature to the note.

Quest. 8. Are you acquainted with one Joseph G. Richie, who has been examined as a witness in this cause? If so, what has become of him? Have you, as sheriff, had any capias for him? Have you tried to take him? What are the charges against him? Was he ever in jail in this county? How did he get out?

Ans. I am. Rumor says that he is in Knox County. I have had four capiases for four different offences. I made one attempt to take him. He was in jail. It was said that he broke jail on the night of the 6th of March. One charge of being accessory to the murder of Tho's Denny; one charge for armed prowling; one indictment for robbery, and a charge of horse-stealing.

219 Quest. 9th. Did you, at any time in 1864, or after or before, have any conversation about the note in this controversy in said Richey's presence, or when he was about you, with Peter Monger, the respondent?

Ans. Never did.

Cross-examination:

Question 1st. Were you, during the times that you had leaves of absence in 1864, in Hamilton County? If so, state in what part of the county you were, what time were you in said county, and how long did you stay in said county?

Answer. I was absent from gen'l hospital from the 9th of May, 1864, till 19th or 20th May, 1864. I was at Harrison, Hamilton County, Tenn., all the time, is my best recollection. And 'gain in July,
220 1864, was absent from gen'l hospital about 10 days, and was at home during the time, my home being in Harrison; also absent 20 days in August, and at Harrison most of the time.

Question 2d. State if you met with Joseph G. Richey in June or July, 1864, at Harrison or in Hamilton County? If so, state where.

Answer. My best recollection is that I did not see Joe. G. Richey, during the year 1864, while I was on the leave of absence.

Question 3d. Please to state directly whether or not you were in company with or saw Joseph G. Richey in June or July, 1864, either on leave of absence or otherwise?

Answer. My recollection is that I did not see him in the year 1864, at no time nor no place.

221 Question 4th. Can you state positively that you did not meet with him in June or July, 1864?

Answer. I did not meet with him in June or July, 1864.

Question 5th. State where you were when Hon. A. G. Welcker showed you the note of which you have spoken; who else beside yourself and said A. G. Welcker were present? If it was during the court, state whether the first or second week of court. Was it before or after the judgment was taken on the same?

Answer. I was at the court-house in the town of Harrison, Hamilton County, Tenn., at the clerk's desk. I don't think any person was present except C. W. Vinson, clerk. It was during court. I don't recol-

222 lect whether it was first or second week. It was before the judgment was rendered, and Hon. A. G. Welcker told me he was going to take judgment that day.

Question 6th. For what purpose did he show you the note, or did he express any object in showing you the note; was there any witnesses to the note; if so, who witnessed the same?

Answer. We got together at the court-house steps. Welcker remarked that he was going to take a judgment against Shirley on a note that evening, and said he was then going up after the papers, and if I would go he would show me the note. Mr. Welcker did not express any motive in showing me the note. I do not recollect whether it was witnessed or not. My best recollection was it was not.

223 Question 7th. Did you have the note in your possession; If so, what did you do with it? Did you see the note at any time after that; if so, in whose possession was it?

Answer. I don't think I had it in my possession. He merely opened the files and showed it to me, and asked me if I thought it was Tho's Shirley's hand-write, & I told him I thought it was. I never saw the note before nor since.

Question 8th. Might you not have been mistaken as to the genuineness of the signature to said note?

Answer. Of course I might.

Question 9th. Do you remember who that note was made payable to? Was there any assignment on it; if so, by whom & the date of the assignment?

224 Answer. A man by the name of Westmoreland. Don't know the initials of his name. I don't recollect whether there was any assignment or not.

Question 10th. Did you give the paper a critical examination, or was it a merely casual inspection; and could you now state positively whether the signature was the genuine signature of Thomas Shirley, or good imitation of the same?

Answer. My recollection is that he merely showed me the note in the file of papers, and that I never had the note in my hands; from the examination, I gave it, as my opinion, that it was Tho's Shirley's handwriting; that is my opinion now.

Question 11th. You have been asked if you had attempted to
225 take Joseph G. Richey since his escape. State when you made said attempt. Please state when you saw him last, and where and in whose presence.

Answer. I have not seen Joe. G. Richey since he broke jail. I took eight men and surrounded a house that he was in, and did not see the man at all. He got away from the house, so I was informed, about daylight.

Question 12. Please to state who was occupying the land in dispute in 1864 & '5 & during the winter months.

Answer. I don't know anything about it.

Question 13. Did you ever see the man named John W. Westmoreland, who is reported as the holder of said note?

Answer. I never knew one John W. Westmoreland.

226 Question 14. Have you ever met with any man in Hamilton County who claimed to know him except Peter Monger; if so, who?

Answer. I never have met with any man who claimed to have known him.

Re-examination by respondent:

Who was A. G. Welcker; what has become of him?

Ans. He was a lawyer; at one time chancellor of this division; at the time spoken of, a practicing attorney; he has since died.

R. G. CAMPBELL.

The further taking of these depositions *were* adjourned by consent, until Wednesday morning at 9 a. m., Nov. 4th, 1868.

D. J. DUFFY,
U. S. Com'r.

227 WEDNESDAY MORNING, *Nov. 4th*, 1868.

The taking of these depositions resumed.

Deposition of C. W. Vinson.

C. W. VINSON, a witness on behalf of respondent, being sworn, deposes as follows:

1st quest., by respondent. Where do you reside, what is your age, and what is your business; how long have you been engaged in it?

Ans. I am a citizen of Chattanooga, Hamilton County, Tenn.; I am now clerk of the circuit and law courts of said county; was elected clerk of said court in March, 1864; I am thirty-eight years old.

2nd quest. At what date was said circuit court re-organized, after the Federals retook possession of Hamilton County?

228 Ans. I am under the impression that the circuit court was re-organized in June, 1864. The records will show, and they are at Harrison.

Quest. 3rd. Did you at any time, have any knowledge of a suit in said circuit court between Peter Monger and Thomas Shirley since said re-organization, and have there more than one suit between said parties since said re-organization in said court?

Ans. Peter Monger brought suit, by attachment, against said Thomas Shirley since the war, and since the re-organization of the circuit courts. Only one suit, which is now in a judgment in said court in favor of the said Monger.

Quest. 4. On what was said suit brought?

Ans. On a note for eight or ten thousand dollars, I think.

229 Quest. 5. Did you ever have possession of said note; if so, when and from whom did you obtain it; how long did you hold it, and for what purpose? State all the circumstances.

Answer. After the re-organization of the circuit court in this county, and for some time thereafter, the records and papers belonging to the circuit court of this county, were kept by me at Chattanooga, it being regarded by all parties as unsafe to let them remain at Harrison, the county at that time being subject to raiding parties from the rebel army. The note referred to was handed me by Peter Monger, the plaintiff, to be kept by me at Chattanooga, inside the Federal lines & Federal pickets; at what time I had possession of said not' I am not able to say, and how long, I cannot say; it was some time before the judgment in the cause, and I think I had possession of the note some time; the note was given me for safe-keeping.

230 Quest. 6. What has become of the note since the judgment?

Ans. The note is lost, or said to be; at any rate it is not in the file of papers, nor in the court, to my knowledge; nor I have *no* knowledge where it is, or how it got out of the file of papers or court.

Quest. 7. During the time the note was in your possession did you see or suspect anything suspicious about the note; are you acquainted with the handwriting of Thomas Shirley; was the note and signature thereto attached in his handwriting?

Ans. At the time the note was in my possession, I supposed it to be the genuine signature or note of Tho's Shirley, and did not suspect that there was anything *rong* about the note, or that there would be

231 any trouble about it. I remember seeing the note, but do not remember that I examined it closely, so as to tell, even if I knew, the signature of the said Tho's Shirley was genuine or not to said note; and I do not think I am acquainted with the handwriting of the said Shirley.

Question 8. Are you acquainted with the handwriting of R. G. Campbell and Peter Monger; was the note in either of their handwritings?

Ans. I am very well acquainted with the handwriting of R. G. Campbell, and, I think, tolerably well acquainted with the handwriting of Peter Monger, probably not well enough acquainted with Monger's to tell it without comparing it. If he was to sign the name of some other person to a note or any other paper, I do not think I am well enough acquainted with his hand-write to tell it. I think I could tell R. G. Campbell's handwriting any where, if my attention was called to

232 the fact; but my attention not being called to the fact, and not suspecting anything wrong about the note, I could not tell anything about whose handwriting it was in.

Cross-examination:

Question 1st. Please to state when you saw said note last. Have you any distinct recollection of having ever seen the note after judgment was rendered on it; if so, how long afterwards did you observe it?

Answer. I do not remember when I last saw the note; I do not remember that I ever saw the note at all after judgment.

Question 2d. Please state at what time of the court judgment was rendered on said note; who conducted the suit and took the judgment; was Peter Monger in attendance at the term of court, and was he present when the judgment was rendered?

233 Answer. I do not remember the term of court; the records will

show. A. G. Welcker, esq., was the attorney that conducted the suit; and I remember that Peter Monger was in town at the time, but do not remember whether he was in the court-room or not; am inclined to the idea that he was not.

Question 3rd. At what time during the progress of the suit was the note in controversy handed to you for safe-keeping?

Answer. I think it was soon after the suit was commenced.

Question 4th. Was there any assignment on the note at the time it was handed to you?

Answer. I do not remember.

234 Question 5th. While the note was in your custody was it kept in the file of papers or separate?

Answer. I think I kept it separate from the papers; I am not certain.

Question 6th. Do you remember distinctly whether you gave the note to Mr. Welcker to draw the declaration by; if so, do you remember to state positively whether you ever took said note out of the papers after that?

Answer. I do not remember who I gave the note to, but I am inclined to the idea or opinion that the note was handed me by Mr. Monger after the suit was brought and declaration filed; I am not certain.

235 Question 7th. At the time judgment was rendered on said note, was there any witness called, or any question made as to the signature to said note; if so, what witness?

Answer. I do not think any such testimony was introduced; I am not certain of the fact; it was an ex-parte proceeding, and I do not think any testimony of the kind was required.

Question 8th. Were you about Harrison in the year 1864; if so, did D. C. Trewhitt reside there at that time; if so, at what time did he come there to reside. How far did Peter Monger reside from Harrison at that time?

Answer. I was at Harrison during the year 1864; at that time my place of residence was Chattanooga, Tenn. D. C. Trewhitt's place of residence at that time was Harrison, and Peter Monger lives about four miles east of Harrison; did at the time, and does still.

236 Question 9th. Did Peter Monger, at any time, either when he gave you the note or since, make any statement to you about how, when, or where, or from whom he got it, what he gave for it? Please state all you remember on these subjects in full.

Answer. I have always understood, and I think I got my information from Peter Monger, (at least I never at any time had any information to the contrary from him,) that he purchased the note, and the consideration paid for it was confederate money. How much confederate money he gave for the note, I can't say certainly, but I think that my understanding from him was, that he gave in confederate money about what the note called for. He told me that he had tried to get, or at least had spoken to Mr. Bell for confederate money to purchase the note with,

237 and I am certain, almost, that Peter Monger told me that he had advised with some of his friends to know whether or not it would be safe to buy the note. He seemed to apprehend the most danger from confiscation on the part of the Government, and was fearful that, if he purchased the note that the Government of the United States would confiscate the lands of Tho's Shirley, and he would be looser to the amount paid by him for confederate money. As to when the purchase was made, I can't say.

Question 10th. Did Peter Monger ever tell you from whom he purchased it?

Answer. I do not remember certain as to that, but I think Peter Monger told me that he purchased the note from the man to whom the note was made payable, and I think that was a Westmoreland.

Question 11th. Have you seen in Hamilton County, about that
238 time or since, any man of the name of John W. Westmoreland? If not, have you seen any man, woman, or child who professed to have seen him, except Peter Monger?

Answer. If ever I saw such a man, I did not at the time know it. I do not know any person by that name, and I do not think I ever heard any person, except Peter Monger, speak of him, so far as citizenship is concerned.

Question 12th. If you know, please state who resided on the Shirley farm in the fall & winter of 1864?

Answer. I do not know.

Question 13th. Do you remember seeing R. G. Campbell at or about Harrison during the month of June or July, 1864, or any other time in that year?

239 Answer. I do not remember seeing R. G. Campbell at Harrison during the year 1864, at this time. I might have seen him, but can't say now.

Question 14. Have you any distinct recollection of ever having the note in your possession, of which you have spoken, after the declaration was filed in the cause; if so, have any distinct recollection as to what time you delivered it to Judge Welcker to take judgment on, or was it not left in the file of papers during the time?

Answer. My recollection upon the subject when it is given as my best recollection in my several answers, is not decidedly clear in every instance, but in each and every answer I have done the best I could; and, as heretofore stated, the note was handed me by Peter Monger, and I am satisfied, after the suit had been commenced, and after the plaintiff's declaration had been filed; it might not be so. It is
240 hardly probable that it could have been otherwise.

Re-examined:

Please give the entire conversation, a part of which you have given in your answer to complainant's 10th question, in this deposition.

Answer. My recollection is that he said he purchased it from Westmoreland, the man to whom it was made payable. My further understanding from Monger was that the said Westmoreland, at the time said purchase was made, was somewhere in the neighborhood of said Monger's; that he was not publicly known there; or in other words, he was a rebel, & probably connected with the rebel army in some way, and did not want the people in that neighborhood to know that he was there, and was hid out in the woods, or some other place, where he would be private. This is in substance what was said about it. This conversation was after the purchase was made, I think.

241 And further this deponent saith not.

C. W. VINSON.

Deposition of D. N. Bell.

DAVID N. BELL, a witness for respondent, being sworn, deposes as follows:

1st quest. In what county do you reside, and how long have you resided in it? Did respondent Monger ever apply to you for a purchase of confederate money; if so, state when it was, where it was, and for what purpose? State all your recollection on that subject.

Ans. I reside in Hamilton County; have resided there twenty-four years. Respondent Monger applied to me for a purchase of confederate money—it was at my house, near Harrison. I can't tell when, but since the war—for the purpose of purchasing a note on Thomas Shirley, that is my recollection. He asked that if he could not get up enough
242 money, he wanted to know if I would take an interest in the purchase with him, and went away, leaving the impression with me that, if he could not procure enough money, he desired me to take an interest with him. He came to me afterwards, and told me he had partners enough in the transaction, and I judged from that he had money enough. I did not let him have any.

What was the date, as near as you can state? Was it before or after the courts had been re-organized, after the Federal troops took possession of Hamilton County?

Ans. I can't tell about the date. My impression is that it was before the courts were re-organized in this county, after the Federal troops took possession.

Cross-examination:

Question 1st. Please state how long this was before the rendition
243 of the judgment against Shirley in October, 1865.

Ans. I don't know how long after the war, nor whether it was before the rendition of the judgment.

Question 2d. How much money of that kind did he want?

Answer. I don't recollect whether he got that far with it. My understanding was that the note was for ten thousand dollars, and could be purchased with confederate money. I don't recollect that there was any definite amount stated.

DAVID N. BELL.

STATE OF TENNESSEE, *Hamilton County:*

The foregoing depositions were taken before me, as stated in the caption, and reduced to writing by the attorneys and witnesses.
244 And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and put them in the post office without being out of my possession or altered after they were taken.

Given under my hand and seal November 9th, 1868.

[SEAL.] DAN. J. DUFFY,
U. S. Com'r.

Com'r fee, $10 00, paid by respondent, Monger.

(Endorsed:) Rec'd this package, sealed up from the post office, Knoxville, Tennessee, & opened & filed by me Dec. 7, 1868. M. L. Hall, clerk.

In the circuit court of the United States for the eastern district of Tennessee, at Knoxville.

THOMAS SHIRLEY
v.
PETER MONGER.

Depositions of R. H. Guthrie, E. A. McKenzie, A. D. Stone, and H. S. Jones, witnesses for the respondent in the above cause, taken by consent, on the 18th day of November, 1868, at my office, in Harrison, Hamilton County, in the presence of R. M. Edwards, attorney for complainant, and respondent and his solicitor.

Deposition of R. H. Guthrie.

245 R. H. GUTHRIE, a witness on behalf of respondent, being sworn, deposes as follows:

1st. What is your age, place of residence, and office?

Ans. I am forty-eight years old; my place of residence is Harrison, Tennessee; and I am now and have been for over four years clerk of the county court of Hamilton County.

2nd. Are you acquainted with Thomas Shirley, the complainant, and Peter Monger, the respondent in this cause? How long have you known them?

Ans. I am, and have known them for more than twenty-five years?

3rd. Did you have any knowledge of respondent Monger's bringing a suit against complainant Shirley? If so, state the time and circumstances fully, on what the suit was brought, and all you know about it.

246 Ans. I was in the office of Thomas W. Spicer, then an acting justice of the peace, when he (Spicer) issued an attachment against Thomas Shirley in favor of Peter Monger, and, according to my recollection, it was early in April, 1864; my information was Peter Monger held a note on Thomas Shirley for some ten thousand dollars, and the attachment was issued on this note.

4th. Who was surety on Monger's attachment bond in that case, and what has become of Thomas W. Spicer?

Ans. I think Samuel McCaleb was the security on the attachment bond; Thomas W. Spicer has since died.

Cross-examination:

Quest. 1st. Did you see the note of which you have spoken? If so, to whom was it payable?

247 Ans. I did not see the note.

Quest. 2. State who drew up the papers for Mr. Monger.

Ans. I do not know for certain now; my recollection is that D. C. Trewhitt had some connection with the matter.

Quest. 3d. Please to state whether this was before or after D. C. Trewhitt was appointed chancellor.

Answer. It was before.

4th. Did you ever know any man in Hamilton County, Tenn., by the name of John W. Westmoreland? If so, where did you see him, who was present, and when did you see him?

Answer. I never knew any man by that name.

248 5th. Have you ever heard any person speak of seeing such a man but Peter Monger? If so, who and where?

Ans. I never have.

6th. Were you residing in Harrison at or about the time of the battle of Missionary Ridge? If so, did Thomas Shirley leave his home about that time.

Ans. I resided about three miles from Harrison at the battle of Missionary Ridge, and was informed that Thomas Shirley left his home about that time.

7. Have you seen him in the county since that time? If so, when & where?

Answer. I have not seen Thomas Shirley since.

8. Were you acquainted with the circumstances of Thomas

249 Shirley pecuniarily before he left the country? Was he involved in liabilities or was he in affluent and easy circumstances? State all you may know about that.

Answer. I supposed that Thomas Shirley was in easy circumstances from the fact he had very good property, and was a persevering, industrious man; yet I do not know whether he was in debt or not.

9th. Are you acquainted with the lands formerly owned by Thomas Shirley in this county, now in the possession of Peter Monger? If so, what is the value of said lands?

Ans. I am acquainted with the lands formerly owned by Thomas Shirley, and now in the possession of Peter Monger; I think the lands are worth eight or ten thousand dollars.

10th. Please to state whether or not said lands were incumbered
250 at the time said attachment issued?

Ans. I do not think they were.

R. H. GUTHRIE.

Sworn to and subscribed before me the 18th Nov., 1868.

A. P. HUNTER, *C. & M.*

Deposition of S. A. McKenzie.

SAMUEL A. MCKENZIE, a witness on behalf of respondent, being duly sworn, deposes as follows:

1st question by respondent's solicitor. What is your age and business, and how long have you been engaged therein?

Ans. Age 34 years; I am dep't' clerk of the circuit court of Hamilton County; have been dep't' clerk about 2 years.

2d. Who has had the principal charge of the office and records and papers of the circuit court at Harrison, Hamilton County, Tennessee, during the time you have been deputy, and where have you resided?

251 Ans. I have had principal charge of the records and papers since I have been dep't'; have resided at Harrison Tennessee.

3rd. Have you examined the files in the case of Peter Monger against Thomas Shirley in said circuit court, out of which this controversy grows, and the other papers in the court? If so, have you been able to find the note on which suit was brought? Where is the note, or what has become of it?

Ans. I have examined the files in the case of Peter Monger against Thomas Shirley, also searched in other files of papers in the circuit court, but have not been able to find the note on which the suit was brought. I do not know where the note is, or what has become of it.

4th. At what time did you discover its loss?

252 Ans. Not very long after I was appointed dep't' clerk—perhaps in the latter part of the year 1866 or early part of 1867.

5th. Are you acquainted with Joseph G. Richey, who has been examined as a witness in this cause? Are there any criminal charges in your court against him?

Ans. I am acquainted with Joseph G. Richie; there *is* criminal charges against him in the circuit court of Hamilton County.

(The above question and answer is excepted to as incompetent.—R. M. EDWARDS, *Atto. for Pl't'ff.*)

6th. Will you please make full copies of the cases against him in your court, and the records thereof, exhibits to your deposition?

253 Ans. I herewith file three copies of cases against J. G. Richie, and mark them Exhibits Nos. 1, 2, & 3 to my depositon. There is one other case against him which I have not copied.

Cross-examination:

Quest. 1st. Did you ever see the note upon which Peter Monger brought suit against Thomas Shirley, in Hamilton Co. circuit court, 1864?

Answer. I never saw the note.

2d. How long have you resided in Harrison, Hamilton Co., Tenn., and were you residing in Harrison in November, 1863?

Answer. I have resided in Harrison about twenty years. I was not residing in Harrison in the year 1863; think I was at Nashville in November, 1863.

3. Did you reside at Harrison in March and April, 1864?

254 Ans. I think I was in Harrison in March, 1864, but did not make it my home; did not stay but a short time.

4. Did you see or hear of any man by the name of John W. Westmoreland, during your stay at Harrison, at the time you mention?

Ans. I did not.

5th. Have you ever seen or heard of such a man being in this county at any time; if so, from whom?

Ans. I have never seen any one by that name, and don't remember of ever hearing any one say that they had seen such a man in this country.

6. As you have been asked about Joseph G. Richie, please state if you have seen him since he escaped from prison; & if so, when and who were with him?

255 Ans. I have not seen him since he escaped from prison.

7. Give your best opinion as to the value of confederate treasury notes in March & April, 1864, in Harrison, or did they have any value at that time?

Ans. I can't say what confederate money was worth at that time; would suppose they were not worth much.

S. A. McKENZIE.

Sworn to and subscribed before me this 18th Nov., 1868.

A. P. HUNTER, *C. & M.*

Exhibit No. 1, to S. A. McKenzie's deposition.

STATE OF TENNESSEE:

Pleas at the court-house in the town of Harrison, county of Hamilton, and State aforesaid, on the 1st Monday, being the 3rd day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and in the 92d year of the independence of the United

256 States. Present, the Honorable William L. Adams, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the courts in the fourth judicial district in said State.

A. B. Conner, sheriff of the county of Hamilton, returns into court the writ of venire facias, to him directed, executed upon A. D. S. Igon, D. B. Bradfield, Houston Hiron, Leonard Lewis, Isaac G. Thomas, Ansolum Brown, S. H. Conner, Sam'l Ashley, D. P. Caldwell, Burrall C. Bell, John W. Murphy, Jesse A. Green, A. J. Berryhill, Kenneth McCoy, Jesse Irwin, Jesse Eldridge, William Haney, G. T. Morgan, Alfred Lee, Hezekiah Varner, P. M. Roberts, Ansel Poe, George Phillip, James Matthews, & James Milliken, all good and lawful men, citizens of the county of Hamilton, and also returns that he has,

by virtue of said writ, summoned J. L. Moore & T. M. Temple, to attend this court as constables.

Thereupon from the jurors summoned as aforesaid, the court proceeds, as the law in such case made and provided directs, to select and empannell a grand jury at this term, when are elected: 1. D. P. Caldwell; 2. A. J. Berryhill; 3. John M. Murphy; 4. Isaac G.
257 Thomas; 5. A. D. S. Igon; 6. Ansel Poe; 7. Russell C. Bell; 8. Kenneth McCoy; 9. Ansolum Brown; 10. Leonard Lewis; 11. Jesse A. Green; 12. George Phillips; 13. P. M. Roberts; of whom the court appoints D. P. Caldwell foreman, who, together with the rest of said grand jurors being elected, empannelled, sworn, and charged to enquire for the body of the county of Hamilton, retire to consider of presentments.

FEBRUARY 6TH, 1868.

THE STATE
vs.
JOSEPH G. RICHIE & JOHN BIGGS. } Robbery.

The grand jurors returned into open court a bill of indictment against the defendants for robbery, endorsed: "A true bill, D. P. Caldwell, foreman of the grand jury," which indictment and endorsements are in the words and figures following, to wit:

STATE OF TENNESSEE, *Hamilton County:*

Circuit court, February term, 1868.

The grand juors for the State, upon their oath present that Joseph G. Richie and John Biggs, on the tenth day of November, 1865, in Hamilton County aforesaid, feloniously and forcibly from the
258 person and of the property of Ephraim Marsh, did steal, take, and carry away one promissory note or bill single executed by Fletcher Rogers to said Ephraim Marsh, about September or October, 1865, and due on the 20th day of December, 1865, for one hundred dollars, and of the value of one hundred dollars, and four dollars in United States Treasury notes or greenbacks of the value of four dollars, in all of the value of one hundred and four dollars, by means of violence, and by putting said Ephraim Marsh in fear, against the peace and dignity of the State.

And the jurors aforesaid, upon their oath do further present that Joseph G. Richie and John Riggs, on the day and year aforesaid, in the county of Hamilton aforesaid, feloniously and forcibly from the person of William Ross did steal, take, and carry away seven dollars in United States Treasury notes or greenbacks of the value of seven dollars, the property of the said William Ross by means of violence, and by putting said William Ross in fear, against the peace and dignity of the State.

A. A. HYDE,
Attorney General.

259 (Endorsed:) Indictment. The State vs. Joseph G. Richie and John Biggs. Jacob R. Marsh, prosecutor. Jacob R. Marsh sworn in open court and sent before the grand jury, Feb'y 5, 1868.
C. W. VINSON, *Clerk.*

A true bill:

D. P. CALDWELL,
Foreman of the Grand Jury.

STATE OF TENNESSEE, *Hamilton County:*

To the sheriff of Hamilton County, greeting:

You are hereby commanded to take the body of Joseph G. Richie and John Biggs, if to be found in your county, and them safely keep, so that you have them before the circuit court now setting for the county of Hamilton, at the court-house in Harrison, on the 1st Monday of Feb'y inst., then and there to answer a charge of the State of Tennessee, exhibited against them by indictment for robbery, and not depart the count' without leave. Herein fail not and have you then and there this writ.

Witness Cha's W. Vinson, clerk of said court, at office in Har-
260 rison, the 1st Monday of February, 1868.

C. W. VINSON, *Clerk*,
By S. A. McKENZIE, *D. C.*

No. . Capias. The State vs. Joseph G. Richie & John Biggs. Iss'd Feb'y 6, 1868. Came to hand 7th Feb'y, 1868. Executed by arresting J. G. Richie, & def't in jail. Biggs not found. Feb'y 8, 1868.

J. G. REED, *D. Sheriff.*

JUNE 1ST, 1868.

THE STATE *vs.* J. G. RICHIE. } Robbery.

Came the attorney general, who prosecutes for the State, and transfers this cause to the retiring docket. It is therefore ordered by the court that the legal cost be taxed for the further order of the court.

STATE OF TENNESSEE:

I, Cha's W. Vinson, clerk of the circuit court for Hamilton County, do certify the foregoing to be a correct copy of the record in the case of The State of Tennessee against Joseph G. Richie; charge, robbery.

Given under my hand and seal of said court, at office in Har-
261 rison, this Nov. 11, 1868.

C. W. VINSON, *Clerk*,
By S. A. McKENZIE, *D. C.*

Clerk's fee, $1 50.

Exhibit No. 2 to S. A. McKenzie's deposition.

STATE OF TENNESSEE:

Pleas at the court-house, in the town of Harrison, county of Hamilton, and State aforesaid, on the first Monday, being the fourth day, of February, in the year of our Lord one thousand eight hundred and sixty-seven, and in the 91st year of the independence of the United States—present, the Honorable William L. Adams, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the courts in the fourth judicial circuit in said State.

A. B. Conner, sheriff of Hamilton County, returns to court the State's

writ of venire facias, to him directed, executed upon Henry Barker, J. C. Lewis, John Brown, Henry Hamill, Francis Edwards, W. R. Brown, W. R. Maysey, G. W. Davis, W. M. Hixon, John A. McKenzie, W. H. Crowder, Dudley Tally, Rezin Lewis, Nathan Hendrix, Elisha
262 Cooley, J. B. Roark, David S. Bolton, A. A. Grimsby, James A. Smith, Jacob Wimberley, J. W. Rogers, W. B. Tallent, Jackson Springer, & J. S. Gillespie, all good and lawful men, citizens of the county of Hamilton, and also returns that he has, by virtue of said writ, summoned John G. Reed, constable, to wait on the grand jury.

Thereupon from the jurors summoned as aforesaid, the court proceeds, as the law, in such cases made and provided, directs, to select and empannell a grand jury for this term of the court, when are elected, first, John Brown; 2, James A. Smith; 3, G. W. Davis; 4, Nathan Hendrix; 5, Dudley Tally; 6, Henry Hammill; 7, Henry Barker; 8, J. B. Roark; 9, J. W. Rogers; 10, W. H. Crowder; 11, Rezin Lewis; 12, J. C. Lewis; 13, W. B. Tallent, of whom the court appoints J. W. Rogers foreman, who, together with the rest of the said grand jury, being elected, empannelled, sworn, and charged to inquire for the body of the county of Hamilton, retire to consider of presentments.

FEBRUARY 11TH, 1867.

263 THE STATE
vs.
JOSEPH G. RICHIE. } Murder.

The grand jurors returned into open court an indictment against the defendant for murder, endorsed "A true bill, J. W. Rogers, foreman of the grand jury;" which indictment *are* in the words and figures following, to wit:

STATE OF TENNESSEE, *Hamilton County:*

Circuit court, February term, 1867.

The grand jurors for the State, upon their oath, present that Elias Wells and John Wells, on the twenty-second day of January, 1867, in Hamilton County aforesaid, did feloniously and of their malice aforethought assault Thomas W. Denny, and then and there wilfully, maliciously, deliberately, and premeditatedly did kill and murder the said Thomas W. Denny by shooting him with pistols, loaded and charged with gun-powder and leaden bullets, in the hands of the said Elias Wells and John Wells, and by them discharged towards, into, and against the said Thomas W. Denny, thereby inflicting upon the body of the said Thomas W. Denny divers mortal wounds, of which he then and
264 there died. And the jurors aforesaid, upon their oath, do further present that Joseph G. Richie, before the said murder was committed, in form aforesaid, to wit, on the twentieth day of January, in the year last aforesaid, in the county aforesaid, did feloniously and of his malice aforethought incite, move, procure, aid, counsel, encourage, and command the said Elias Wells and John Wells to do and commit the said murder in manner and form aforesaid, against the peace and dignity of the State.

And the jurors aforesaid, upon their oath aforesaid, do further present that Elias Wells and John Wells, on the twenty-second day of January, 1867, in Hamilton County aforesaid, did feloniously and of

their malice aforethought assault Thomas W. Denny, and then and there wilfully, maliciously, deliberately, and premeditatedly did kill and the said Thomas W. Denny by shooting him with pistols loaded and charged with gun-powder and leaden bullets in the hands of the said Elias Wells and John Wells, and by them discharged at and against
265 the said Thomas W. Denny, the said Elias Wells and John Wells then, there, and thereby inflicting upon the body of the said Thomas W. Denny divers mortal wounds, of which he instantly died.

And the jurors aforesaid, upon their oath aforesaid, do further present that Joseph G. Richie, in the county of Hamilton aforesaid, well knowing the said Elias Wells and John Wells to have done and committed the said murder in form aforesaid, afterwards, to wit, on the day and year aforesaid, did feloniously and maliciously maintain, relcive, comfort, and assist the said Elias Wells and John Wells, and enable and assist them to escape and evade the pursuit of justice, against the peace and dignity of the State.

A. A. HYDE,
Attorney General.

(Endorsed:) Indictment. The State vs. Joseph G. Richie. Martha Denny, prosecutrix. Geo. B. F. Guthrie, John F. Hamil, Wiley Green, Mrs. Eliza Keener, Teressa Carden, Decatur Davis, R. G. Campbell, sworn in open court, and sent before the grand jury, Feb'y 11,
266 1867. C. W. Vinson, clerk. A true bill found this 11th Feb'y, 1867. J. W. Rogers, foreman of the grand jury.

Capias.

STATE OF TENNESSEE, *Hamilton County:*

To the sheriff of Hamilton County, greeting:

You are hereby commanded to take the body of J. G. Richie, if to be found in your county, and him safely keep so that you have him instantly before the court now sitting for the county of Hamilton, at the court-house in Harrison, the 1st Monday of February, 1867, then and there to answer a charge of The State of Tennessee exhibited against him by indictment for murder, and not depart the court without leave. Herein fail not, and have you then and there this writ.

Witness, Cha's W. Vinson, clerk of said court, at office in Harrison, the 1st Monday of February, 1867.

C. W. VINSON, *Clerk.*

No. inst. capias. The State vs. J. G. Richie. Iss'd 11th Febr'y, 1867.

267 Came to hand the same day issued and executed by arresting the defendant as commanded, and bring' him into court Feb. 11th, 1867.

JOHN F. HAMILL,
S. D. Sheriff.

I hereby make John F. Hamill my special dep't. to execute the within this 11th day Feb'y, 1867.

A. B. CONNER,
By C. E. SHELTON, *D. Sh'ff.*

JUNE 5TH, 1867.

THE STATE
vs. } Murder.
J. G. RICHIE.

Came the attorney general, who prosecutes for the State, and the defendant being brought to the bar of the court in the custody of the sheriff, who, being arraigned and charged, for plea, says he is not guilty in manner and form as charged in the bill of indictment, and for his trial puts himself upon the country, and the attorney general doth the like. Thereupon this cause is continued, as upon the affidavit of the attorney general, until the next term, and the defendant is remanded to jail.

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JUNE 6TH, 1867.

THE STATE
vs. } Murder.
J. G. RICHIE.

Came the attorney general, who prosecutes for the State, and the defendant, being brought to the bar of the court in the custody of the sheriff; and, from sufficient cause disclosed to the court from the affidavit of the defendant, it is ordered by the court that notice be served upon A. B. Conner, sheriff of the county of Hamilton, requiring him to appear before the Hon. W. L. Adams, judge, &c., at Chattanooga, Tennessee, on the third Monday of June, 1867, then and there to show cause, if any he has, why the defendant has been so cruelly and closely confined in irons while in his custody as a prisoner, if such is the fact and it is so.

OCT. 10, 1867.

THE STATE
vs. } Murder.
J. G. RICHIE.

269 Came the attorney general, who prosecutes for the State, and the defendant being brought to the bar of the court in the custody of the sheriff, thereupon this cause is continued, as upon the affidavit of the attorney general, until the next term. Thereupon T. D. Davis acknowledged himself indebted to The State of Tennessee in the sum of two hundred and fifty doll's, to be void on condition he makes his personal appearance before this court when sitting for the county of Hamilton at the court-house in Harrison the first Monday of Feb'y next, then and there to give his evidence on behalf of The State of Tennessee against J. G. Richie, on a charge for murder, and not depart the court without leave.

FEB'Y 6TH, 1867.

THE STATE
vs. } Accessory to murder.
JOSEPH G. RICHIE.

Came the atto'y gen'l, who prosecutes for the State, and the defendant being brought to the bar of the court in the custody of the sheriff, thereupon the defendant moved the court to show cause why the indictment in this cause should be quashed.

JUNE 1ST, 1868.

270 THE STATE *vs.* J. G. RICHIE. } Murder.

Came the attorney general, who prosecutes for the State, and transfers this cause to the retiring docket. It is therefore ordered by the court that the legal costs be taxed for the further order of the court.

STATE OF TENNESSEE:

I, Cha's W. Vinson, clerk of the circuit court for Hamilton County, do certify the foregoing to be a correct copy of the records in the case of The State of Tennessee against Joseph G. Richie, charged being accessory to murder.

Given under my hand and seal of said court, at office in Harrison, the 17th day November, 1868.

[SEAL.] C. W. VINSON, *Clerk.*
By S. A. McKENZIE, *D. C.*

Clerk's fee, $2 30.

Exhibit No. 3 *to McKenzie's deposition.*

STATE OF TENNESSEE:

Pleas at the court-house, in the town of Harrison, county of Ham-
271 ilton, and State aforesaid, on the first Monday, being the fourth day, of February, in the year of our Lord one thousand eight hundred and sixty-seven, and in the 91st year of the independence of the United States—present, the Hon. William L. Adams, one of the judges of the circuit courts for the State of Tennessee, and assigned to hold the courts of the 4th judicial circuit in said State.

A. B. Conner, sheriff of the county of Hamilton, returns to court the State's writ of venire facias, to him directed, executed upon Henry Barker, J. C. Lewis, John Brown, Henry Hamill, Francis Edwards, W. R. Brown, W. R. Maysey, G. W. Davis, W. M. Hixon, John A. McKenzie, W. H. Crowder, Dudley Tally, Rezin Lewis, Nathan Hendrix, Elisha Cooly, J. B. Roark, David S. Bolton, A. A. Grimsley, James A. Smith, Jacob Wimberley, J. W. Rogers, W. B. Tallent, Jackson Springer, and J. S. Gillespie, all good and lawful men, citizens of the county of Hamilton; and also returns that he has, by virtue of said writ, sum-
272 moned John G. Reed, constable, to wait on the grand jury, and Andrew Johnson to attend the court.

Thereupon, from the jurors summoned as aforesaid, the court proceeds, as the law in such case made and provided, directs, to select and empannell a grand jury for this term of the court, when are elected, first, John Brown; 2, James A. Smith; 3, G. W. Davis; 4, Nathan Hendrix; 5, Dudley Tally; 6, Henry Hamill; 7, Henry Barker; 8, J. B. Roark; 9, J. W. Rogers; 10, W. H. Crowder; 11, Rezin Lewis; 12, J. C. Lewis; 13, W. B. Tallent; of whom the court appoints J. W. Rogers foreman, who, together with the rest of said grand jury, being elected, empannelled, sworn, and charged to enquire for the body of the county of Hamilton, retire to consider of presentments. John G. Reed, constable, summoned as aforesaid, is sworn to attend the grand jury.

FEBR'Y 13TH, 1867.

THE STATE
vs.
JOSEPH G. RICHIE & ELIAS WELLS. } Armed prowlers.

The grand jurors returned into court a bill of indictment against the defendants for armed prowlers, endorsed, "A true bill, J. W. Rog-
273 ers, foreman of the grand jury;" which indictment *are* in the words and figures following, to wit:

STATE OF TENNESSEE, *Hamilton County:*

Circuit court, February term, 1867.

The grand jurors for the State, upon their oath, present that Joseph G. Richie and Elias Wells, on the 16th day of January, 1867, in Hamilton County aforesaid, were armed prowlers, and being such armed prowlers, did wilfully, maliciously, and forcibly, make an attack, armed with pistols, upon Sherrod A. Webb, a peaceable citizen of the State of Tennessee, for the purpose of killing the said Sherrod A. Webb, against the peace and dignity of the State.

And the jurors aforesaid, upon their oath, do further present that Joseph G. Richie & Elias Wells, on the 16th day of January, 1867, in Hamilton County aforesaid, being armed prowlers, did wilfully, maliciously, and forcibly make an attack with pistols, upon Sherrod A. Webb, a peaceable citizen of the State of Tennessee, for the purpose of robbing him or stealing his property, against the peace and
274 dignity of the State.

A. A. HYDE,
Attor. General.

(Endorsed:) Indictment. The State vs. Joseph G. Richie and Elias Wells. Sherrod A. Webb, prosecutor. Sherrod A. Webb and Drucilla Webb sworn in open court and sent before the grand jury. Feb'y 13th, 1867. C. W. Vinson, clerk. A true bill found this 13th Feb'y, 1867. J. W. Rogers, foreman of the grand jury.

JUNE 6TH, 1867.

THE STATE
vs.
JOSEPH G. RICHIE. } Armed prowler.

Came the attorney general, who prosecutes for the State, and the defendant being brought to the bar of the court, in the custody of the sheriff, thereupon the defendant by counsel, moved to quash the indictment; which motion, after argument of counsel, is overruled, and this cause is continued, as on the affidavit of the defendant, until the next term, and the defendant is remanded to jail. Thereupon Sherrod Webb,
275 Drucilla Webb, Nancy Aiken, Elizabeth McGee, Mary Plowman, W. H. Crowder, Ann Jones, John Denny, George Jones, and Susan A. Nolen, witnesses for the State, appeared in open court and acknowledged themselves indebted to The State of Tennessee in the sum of two hundred and fifty dollars each, to be levied of their respective goods and chattels, lands and tenements, to the use of the State, but to be void on condition they make their personal appearance before this court when sitting for the county of Hamilton, at the court-house in

Harrison, the first Monday of October next, then and there to testify and give their evidence on behalf of The State of Tennessee, against the defendant, J. G. Richie, and not depart the court without leave.

STATE OF TENNESSEE, *Hamilton County:*

To the sheriff of Hamilton County, greeting:

You are hereby commanded to take the body of Joseph G.
276 Richie and Elias Wells, if to be found in your county, and them safely keep, so that you have them before the circuit court when sitting for the county of Hamilton, at the court-house in Harrison, on the 1st Monday in June, then and there to answer a charge of The State of Tennessee, exhibited against them by indictment, for being armed prowlers, and not depart the court without leave. Herein fail not, and have you then and there this writ.

Witness Cha's W. Vinson, clerk of said court, at office in Harrison, the 1st Monday of Feb'y, 1867.

C. W. VINSON, *Clerk*,
By S. A. McKENZIE, *D. C.*

No. Capias. The State vs. J. G. Richie & Elias Wells.
The same day came to hand, executed upon J. G. Richie, he being in jail, this Feb'y 18th, 1867.

A. B. CONNER, *Sheriff.*

OCT 11TH, 1867.

THE STATE
vs } Armed prowlers.
J. G. RICHIE & ELIAS WELLS.

277 Came the attorney general, who prosecutes for the State, and the defendant being brought to the bar of the court in the custody of the sheriff, thereupon this cause is continued on the affidavit of the attorney general, until the next term. And from sufficient cause disclosed to the court from the affidavit of the attorney general, an attachment is ordered to issue to this county and also to Bradley County, for A. J. Cantrell, a witness summoned on behalf of the State in this cause, returnable to the next term of this court.

FEBRUARY 8TH, 1868.

THE STATE
vs. } Armed prowlers.
J. G. RICHIE & ELIAS WELLS.

Came the attorney general, who prosecutes for the State; and the defendant was brought to the bar of the court in the custody of the sheriff; thereupon the defendant moved the court to quash the second count in the indictment in this cause, and the same being argued and fully understood, it is considered by the court that the said motion be overruled; to all of which the defendants except in law: There-
278 upon, on the application of the defendants, and by consent, a severance is had in this cause, and the defendant Joseph G. Richie first put upon his trial, and the defendant Elias Walls is remanded to jail; and the said defendant Joseph G. Richie being arraigned and charged, for plea says he is not guilty in manner and form as charged in the bill of indictment, and for his trial puts himself upon

the country. And the attorney general doth the like. And thereupon came the following jury, to wit: 1, Orson Shipley; 2, J. C. Bean; 3, Jesse P. Shipley; 4, J. W. Branham; 5, R. F. Coleman; 6, Henry Hickman; 7, Monroe Parrott; 8, W. B. Scott; 9, Reuben Brown; 10, S. J. Westbrook; 11, G. W. Penny; 12, A. J. Penny; all good and lawful men, citizens of the county of Hamilton, who, being elected, tried, and sworn to well and truly try the issue joined between the State of Tennessee and the defendant, who, not having heard all the evidence in this cause, and received the charge of the court, are placed in the charge of the sheriff of this county, to be kept and provided for by him, as required by law, until the meeting of the court to-morrow
279 morning 8 o'clock, and the prisoner is remanded to jail.

FEBRUARY 7, 1868.

THE STATE *vs.* J. G. RICHIE. } Armed prowler.

Came the attorney general, who prosecutes for the State; and the defendant being brought to the bar of the court in the custody of the sheriff, thereupon came the same jury, to wit: 1, Orson Shipley; 2, J. C. Bean; 3, Jesse P. Shipley; 4, G. W. Branham; 5, R. F. Coleman; 6, Henry Hickman; 7, Monroe Parrott; 8, W. B. Scott; 9, Reuben Brown; 10, S. J. Westbrook; 11, G. W. Penny; 12, A. J. Penny; who were, on yesterday, elected, tried, and sworn to well and truly try the issue between the State of Tennessee and the defendant, who, not having heard all the evidence, the argument of counsel, and received the charge of the court, are placed in the charge of the sheriff of this county, to be kept and provided for by him until the meeting of the court this morning 8 o'clock, who now come and resume the further consideration of this cause, and, after hearing all the evidence, the argument
280 of counsel, and receiving the charge of the court, and not yet having agreed, are again placed in the charge of the sheriff of this county, to be kept and provided for by him until the meeting of the court to-morrow morning 8 o'clock, and the prisoner is remanded to jail.

FEBRUARY 8, 1868.

THE STATE *vs.* JOSEPH G. RICHIE. } Armed prowler.

Came the attorney general, who prosecutes for the State; and the defendant again being brought to the bar of the court in the custody of the sheriff, thereupon came the same jury, to wit: 1, Orson Shipley; 2, J. C. Bean; 3, Jesse P. Shipley; 4, G. W. Branham; 5, R. F. Coleman; 6, Henry Hickman; 7, Monroe Parrott; 8, W. B. Scott; 9, Reuben Brown; 10, S. J. Westbrooks; 11, G. W. Penny; 12, A. J. Penny; who had heretofore been elected, tried, and sworn to well and truly try the issue joined between the State of Tennensee and the defendant, who, on yesterday, not having agreed, were placed in charge of the
281 sheriff of this county, to be kept and provided for by him until the meeting of the court this morning 8 o'clock, who now come and resume the further consideration of this cause, and, after mature deliberation, upon their oaths do say the defendant is guilty in manner

and form as charged in the bill of indictment, and the prisoner is remanded to jail.

FEBRUARY 10TH, 1868.

THE STATE *vs.* J. G. RICHIE. } Armed prowler.

Came the attorney general, who prosecutes for the State; and the defendant again being brought to the bar of the court in the custody of the sheriff, thereupon the defendant moved the court to show cause why a new trial should be granted in this cause.

Affidavit.

J. G. Richie, the defendant in the above cause, makes oath that Mrs. Priscilla Webb and Jacob R. March were material witnesses against him in the trial of said cause; that the testimony of both of said
282 witnesses in many important and material points was false; that he believes that he can prove the falsity of the testimony of said witness on another trial, and that he was surprised at the introduction of said testimony; that he was also taken by surprise at the introduction of testimony in regard to particular acts which transpired previous to the passage of the act under which he was indicted, and while a combatant and in the employ of the United States as a scout; and that the witnesses, being put under the rule, he was cut off from the introduction of evidence to show his connection with the U. S. Army at the time said acts were committed, and that he was acting under orders; that he can clearly substantiate said facts in another trial.

J. G. RICHIE.

Subscribed and sworn to before me this 11th day Feb'y, 1868.

C. W. VINSON, *Clerk.*

FEBRUARY 12, 1868.

THE STATE *vs.* JOSEPH G. RICHIE. } Armed prowler.

283 Came the attorney general, who prosecutes for the State; and the defendant again being brought to the bar of the court in the custody of the sheriff, and the rule granted the defendant to show cause why a new trial should be granted in this cause being argued and fully understood, it is ordered by the court that said rule be made absolute, the verdict of the jury rendered in this cause set aside and for nothing held, and a new trial granted, and the prisoner is remanded to jail.

JUNE 1ST, 1868.

THE STATE *vs.* J. G. RICHIE. } Armed prowling.

Came the attorney general, who prosecutes for the State, and transfers this cause to the retiring docket; it is therefore ordered by the court that the legal costs be taxed for the further order of the court.

STATE OF TENNESSEE:

I, Cha's W. Vinson, clerk of the circuit court of Hamilton
284 County, certify the foregoing to be a correct copy of the records in the case of the State of Tennessee against Joseph G. Richie for armed prowler.

Given under my hand and seal of said court, at office in Harrison, this 11th day Nov., 1868.

[SEAL.] C. W. VINSON, *Clerk*,
By S. A. McKENZIE, *D. C.*

Clerk's fee, $3 15.

Deposition of A. D. Stone.

And A. D. STONE, a witness for respondent, being sworn, deposes as follows:

1st quest. by respondent. Where do you reside, what office did you hold, and where were you stationed in the year 1864, say from January to July?

Ans. My present home is Charleston, Tennessee. In the months of May, 1864, to the month of July in the same year, I held the office of second lieut. in the United States Army. In the months of May and June, 1854, I was stationed at or near Nashville, Ten. In the
285 months February and a portion of March, 1864, I was on the march from West Point, Mississippi, to Memphis and Nashville, Tennessee, with the 4th Tennessee Cavalry.

2d. Was Joseph G. Ritchie, who has been examined as a witness in this cause, a member of your regiment; if so, of whose company? Were you acquainted with him?

Ans. Joseph G. Richie was a member of my regiment. He was commissioned lieut. of Company L, according to my recollection, in the month of April, 1864, and resigned some time about the last of May following.

3rd. Where was Mr. Richie during the months of March, April, and May, 1864?

Ans. I do not recollect positively about the month of March, but in the month of April and until the latter part of May he was with the regiment at or near Nashville, Tennessee.

286 4th. Was he discharged or dismissed from the service; if so, at what time, and on what account?

I do not know of my own knowledge under what circumstances he resigned, but I understood from members of the regiment that he was notified by the lieut. colonel to resign or he would be dismissed the service. This, I think, was in the latter part of May, 1864.

A. D. STONE.

Deposition of H. S. Jones.

HENRY S. JONES, a witness for the respondent, being sworn, deposes as follows:

1st. Where do you reside, and how long have you resided there?

Ans. I reside in Hamilton County, Tennessee, and have for 20 years?

2d. Are you acquainted with Joseph G. Richie, who has been
287 examined as a witness in this cause; if so, how long have you known him?

Ans. I am acquainted with Joseph G. Richie, and have been for 2 or 3 years.

3d. Did you ever have any conversation with him in regard to the note for ten thousand dollars sued by Monger against Shirley in the circuit court of this county? If so, state the circumstances and what he said.

He has frequently talked about that matter to me, but all that I recollect definitely was what he told me last summer at his mother-in-law's house one day when myself and J. L. Moor went there to see him. I asked him if his deposition had been taken. He said it had not. He said that there was considerable ado about his deposition between Edwards and Marshall. He said that Edwards had been to see him about it. He also said that he had *lay* out in order to avoid having
288 anything to do in the matter; but he said that there was money in it, but he was going to do Monger right about it. He also said that he knew nothing about it.

HENRY S. JONES.

Sworn to and subscribed before me this 18 Nov., 1868.

A. P. HUNTER, *C. & M.*

The foregoing depositions were taken before me as stated in the caption, and reduced to writing by the witnesses respectively. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and delivered them to the postmaster and placed them in the post office without their being out of my possession, or altered, added to, or changed after they were taken.

Given under my hand the 18th day of November, 1868.

A. P. HUNTER,
Clerk & Master of the Chancery Court,
at Harrison, Hamilton County, Tenn.

289 (Endorsed:) Rec'd this package from post office, Knoxville, Tenn., sealed up, which was opened & filed by me Nov. 30, 1868.

M. L. HALL, *Clerk.*

Deposition of C. D. Luttrell.

In the Federal court, at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

The deposition of C. D. Luttrell, a witness for the defendant in the above-named cause, taken upon notice, at the residence of W. C. Thatcher, in Hamilton County, Tennessee, on the 12th day of December, 1868, in the presence of respondent.

Said witness, C. D. LUTTRELL, of lawful age, being duly sworn, deposes as follows:

1st int'r. Did you at any time have a conversation with Thomas Shirley in reference to his business and property which he had in Tennessee subsequent to the war; if so, where did the conversation occur, at what time, and was anything said in reference to a debt or judgment
290 which def't, Monger, had on Thom's Shirley; if so, what was said

by Shirley? Give the conversation and the time and place when it occurred.

Answer. I was at Thomas Shirley's in December, 1865, and told him I had understood Monger had taken judgment against him on a note he had bought on him for ten thousand dollars, and also told him Monger had bought his land under confiscation.

2d int'r. Did complainant, Shirley, state anything in this conversation, or in any other conversation, in reference to an obligation or debt which he owed to some person or persons in Middle Tennessee? If so, state fully all that was said by Thomas Shirley, when and where the conversation occurred, and all about it.

Thomas Shirley said he did not give any note for the property he got in Middle Tennessee, but gave an article of agreement. He told
291 me this on various occasions.

C. D. LUTTRELL.

The foregoing deposition was taken before me, as stated in the caption, and reduced to writing by the witness in my presence. I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed it up and put in the post office, without being out of my possession or altered after it was taken.

This 12th day of December, 1868.

JAMES P. TALLY,
J. P. Hamilton Co., Tenn.

Bill cost.

J. P., James P. Tally	$1 00
Witness C. D. Luttrell	1 00
Bailiff Richard Thomas	25
	$2 25

(Endorsed:) Rec'd from post office at Knoxville, sealed up; then opened by me & filed Dec. 18, 1868. M. L Hall, clerk.

Notice of taking depositions.

In the Federal court, at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

292 You are notified that, on the 10th day of December, 1868, at the court-house, in Pikeville, Bledsoe County, Tennessee, I will take the deposition of David Westmoreland, and, on the 12th day of December, 1868, at the residence of W. C. Thatcher, in Hamilton County, Tennessee, I will take the deposition of C. D. Luttrell, to be read on the trial of the above-named cause.

PETER MONGER, *Resp't.*

(Endorsed:) Notice. Thomas Shirley vs. Peter Monger. Thomas Shirley being a non-resident of the State, I have this day delivered a

copy of the within notice to R. M. Edwards, his attorney, this 1st day of December, 1868.

RICHARD THOMAS, *Const.*

Deposition of David Westmoreland.

In the Federal court, at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

The deposition of David Westmoreland, a witness for the defendant in the above-named cause, taken, upon notice, at the court-house in Pikeville, Bledsoe County, Tennessee, on the 10th day of December, 1868, in the presence of the complainant and defendant, by their respective solicitors.

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Said witness, DAVID WESTMORELAND, of lawful age, being duly sworn, deposes as follows:

1st. int. by resp'd't. Did you ever meet the complainant, Tho's Shirley, and if so, did he have any conversation with you in reference to a note or debt which some one by the name of Westmoreland had on him, and which was in defendant's hands, or claimed by him? If so, state what was said by the complainant, where and when the conversation occurred; state all about it.

Ans'r. I do not recollect of having any conversation with Mr. Shirley in regard to the note or claim.

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2d. int. Has any one had any conversation with you in reference to the claim referred to in the first interrogatory; if so, who was it, where was it, when was it, and what was said?

Ans. About two years ago, as well as now remember, in Hamilton County, Tennessee, Joseph Ritchie asked me if I did not or had not sold to Peter Monger a note for ten thousand dollars on Thomas Shirley. I told him I had not, and that I was not worth that much.

3d. int'r. Did you at that time, or do you now know, anything about the note purchased or claimed to be purchased by Peter Monger of Thomas Shirley? If so, state all you know about it.

Ans'r. At the time of the conversation between Ritchie and myself, I knew nothing about the note, except Ritchie told me Peter Monger had bought a note from a man by the name of Westmoreland,

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on Thomas Shirley, for ten thousand dollars. Some time since about two or three months ago, a man representing himself as John W. Westmoreland, came to my house in Bledsoe County, Tenn. We had some talk together in reference to our families; he stated that he had heard a man by the name of Westmoreland lived on the road and he had come by to see if we were related. I mentioned to him that I had lived in Hamilton County, Tenn., and had been raised there and in Bradley County, principally; in the conversation, the name of Monger was mentioned. He stated to me that he had a little acquaintance with Peter Monger, and that he had sold or traded to Mr. Monger a note for ten thousand dollars on Thomas Shirley; that Mr. Monger had paid him for the note, but that he paid for the note in confederate money.

4th interrogatory. While you were in Hamilton County did you know Peter Monger, and did you reside near him?

296 Ans'r. I knew Peter Monger very well while I was in Hamilton Co. I had several transactions with him, and did most of my milling at his mill.

Cross-examination:

Question 1st. Did you ever see the man calling himself John W. Westmoreland at any other time than the time you have stated?

Answer. No, sir; not that I know of.

Question 2d. Please to give a description of the man J. W. Westmoreland, his probable age, height, weight, color of his hair and eyes.

Answer. He was a middle-aged man, cannot say positively about that; would weigh about 165 or 170 lbs.; don't recollect the color
297 of his hair nor eyes; he only staid an hour or two, and got dinner & fed his horse & went off.

Question 3rd. Where did he say he lived?

Answer. He told me he lived about Atlanta, to the right or left, don't recollect which.

Quest. 4th. Where did he say he was then going?

Answer. He said he was started home then.

Quest. 5. Where did he say he had been?

Answer. He had been up in the valley, above where I reside, looking at a place, was what he said.

298 Question 6th. Did he state where he had staid the night before; if so, where?

Answer. If there was any such talk I don't recollect it.

Question 7. What month, and the date of the month did he call on you, and who else were present during the conversation?

Answer. I can't recollect the month, but it was in roasting year time; there were several present. I live in one end of a double house. James Shoemake and family live in one end; I and my family in the other end, and both families were passing about while we conversed on the porch or hall.

Question 8th. Did he tell you at what time he sold the note to Monger?

299 Answer. He was telling me something about it, but I don't exactly recollect the time; I think it was about the time the Yankees came in, or before; I don't recollect the exact time.

Question 9th. Where did he say he made the trade—at whose house?

Answer. He told me he sold the note to Monger at Monger's house.

Question 10th. Did he say any person was present when he assigned the note to Monger; if so, who?

Answer. He did not say anything about any person being present.

Question 11th. Have you had any conversation with Mr. Richie about this matter since the one detailed by you?

Answer. I have not.

300 Question 12th. Where were you when he had this conversation with you, and who else were present?

Answer. It was over here about Harrison; I can't tell exactly where. I lived in Harrison then; I don't remember of any one being present.

Question 13th. Have you any brother of the name of John W. Westmoreland?

Answer. I had a brother of that name who did reside in Texas County, Missouri, but I have been told by his widow that he was dead before the war.

Question 14th. Where does his widow reside, and what was her

maiden name before marriage, and where do or did her family reside when you last knew them?

301 Answer. I do not know what county, but she lived in Georgia —not far down. Her name was Tempy Owens, before marriage. She lived near her people.

Question 15. Please state if you know any of her relatives; if so, give their names, and how far down in Georgia they lived when you knew them.

Ans. One brother was named James Owens, and another Thad'eus. They lived in one day's ride from where I lived in Hamilton County, below Dalton, Georgia. I do not know where they now live.

Question 16th. Where did you reside on the 15th of Dec'r, 1863, a short time after the battle of Mission Ridge?

302 Answer. I was in Harrison, having gone there a few days, perhaps only a day or two after the battle, and remained there until the winter of 1865–'6.

Question 17th. Were you at Peter Monger's house often while you resided at Harrison?

Answer. I was there several times.

Question 18. Were you ever there in company with J. G. Richey and R. G. Campbell, or either of them?

Answer. I don't recollect of being there with Campbell; may have been there with Richey, but do not recollect, certainly.

Question 19th. Did you see any man in Hamilton County of the name of John W. Westmoreland, in the year 1864?

Answer. Not that I know of.

303 Question 20. Did you ever see any man who said he had seen such a man, except Peter Monger, or did you ever hear of any one seeing him besides Monger?

Answer. No; I never heard anything about it, except Monger asked me if I knew such a man.

Question 21st. About what time was it Monger asked you this?

Answer. I can't recollect that.

Question 22d. Please to state if Peter Monger, J. G. Richey, R. G. Campbell, and D. C. Trewhitt were not particular friends, and frequently associated about the years 1864 & 1865?

304 Answer. I think they were so far as I can recollect, during the time I lived at Harrison.

Question 23d. Did J. G. Richie, at any time, become the tenant of Monger; if so, how long did he remain so?

Answer. I think Richie moved to the Shirley place, then claimed by Monger, and remained there until he was burnt out in the winter of 1864–'5.

Question 24th. Have you had any conversation with Peter Monger about what you were expected to swear in this cause?

Answer. We have had some little talk about it.

Question. Did you, at any time, give notice to Monger what you would swear in the cause?

305 Answer. No, sir.

Question 26th. When did you first learn that you was to be a witness in this cause?

Answer. I don't know. I did not know for certain until yesterday. I expected that I would be from what was said.

Question 27th. Had you stated to any person the substance of the conversation you had with the man calling himself J. W. Westmoreland; if so, to whom did you state it?

Answer. Yes; me & Tho's Shoemake talked about it, and may be several others. I don't know who all.

Question 28. Has Peter Monger been to your house or sent any
306 person to you since you had the conversation with the man J. W. Westmoreland, or have you been to his house since to converse with him; if so, tell all about it.

Answer. Peter Monger has been to my house twice to see me. He was there yesterday, and a couple of weeks ago. He was at my house and enquired of me what I knew about the man calling himself Westmoreland, and what I knew about the case.

Question 29th. Are you positively certain that the man who called on you called himself John W. Westmoreland or James W. Westmoreland?

Answer. He told me John W. Westmoreland was the way I understood him.

Question 30. Did Peter Monger tell you how he had learned you knew anything about it?

307 Answer. I don't recollect that he did.

Question 31. I'll ask you now to state positively whether or not Peter Monger was not the first and only man who ever told or suggested that the man's name was John W. Westmoreland?

Answer. No, sir; the man told me so himself.

Question 32d. You have stated that you had frequently conversed with Thomas Shoemake about the man calling himself J. W. Westmoreland; now please state if you had conversed with him frequently before Monger's first visit to you about two weeks ago.

Answer. I don't recollect certainly, but think I had conversed with him about the man. Several of the neighbors had asked me if I
308 was related to that man who called on me.

Question 33. Did any of James Shoemake's family hear the stranger when called himself Westmoreland?

Answer. I don't know.

Question 34. In answer to the 3rd direct interrogatory you say and the man claiming to be John W. Westmoreland, you say the name of Monger was mentioned. Please state how and in what connection Monger's name was brought up; who first suggested his name, and in what connection.

Answer. I don't know how it came up. Don't know which mentioned it first, nor in what connection.

Question. 35. Were you at Harrison in October, 1865, when
309 Monger got judgment against Shirley on his note.

Answer. I don't recollect anything about the judgment.

his
DAVID + WESTMORELAND.
mark.

Sworn to and subscribed before me this 10th December, 1868.

A. L. SPEARS, *Clerk.*

The foregoing deposition was taken before me, as stated at the caption, and was reduced to writing by the solicitors in presence of the witness, and by consent of each of the parties, by their solicitors. I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed it up and put it in the post office without being out of my possession, or altered after it was taken, this 10th December, 1868.

A. L. SPEARS,
Clerk of the Circuit Court Bledsoe County.

(Endorsed:) Rec'd this package from the post office at Knoxville, sealed up, which was then opened by me & filed Dec'r 16, 1868. M. L. Hall, clerk.

310 *Deposition of A. P. Hunter.*

In the circuit court of the United States for the eastern district of Tennessee.

THOMAS SHIRLEY }
vs. }
PETER MONGER. }

The deposition of A. P. Hunter, a witness for the defendant in the above stated cause, taken upon notice, and adjournments on the 7th day of June, 1870, at the office of the clerk & master of the chancery court at Harrison, Hamilton County, Tennessee, in presence of defendant by his attorney.

Said witness, A. P. HUNTER, aged 46 years, being sworn, deposes as follows:

1st int'g. What is your age, residence, and official position, if any, and how long have you occupied your present official position? How long have you been acquainted with Thomas Shirley, and how long did he reside in Hamilton County? Are you acquainted with his general character and reputation in the community where he resided in this county?

311 Answer. My age is 46 years; my residence is Harrison, Hamilton County, Tennessee; I am clerk & master of the chancery court at Harrison; I have been acting as such clerk & master about 6 years. I have been acquainted with Tho's Shirley for twenty-five years or more; I suppose that Thomas Shirley has resided in Hamilton County for thirty years or more. I am very well acquainted with his character and reputation in the community where he resided in this county.

2 int'g. From your own knowledge of the character of said Shirley and his general reputation in the community, would you believe said Shirley when testifying under oath in a cause in which he had any interest? What was *the* general reputation in this county for veracity? When did said Shirley remove from Hamilton County?

Answer. From my knowledge of the character of said Shirley, and his general reputation in the community where he lived, I could
312 not give him full faith and credit on his oath when testifying in a cause where he was interested. His general reputation in this county for veracity was bad. My understanding is that said Shirley removed from Hamilton County some time in the fall of 1863.

3rd intr'g. At what time was the battle of Mission or Missionary Ridge fought; and, at about what date, the Federal forces occupy the country where said Shirley resided in the county?

Answer. My recollection is that the battle of Missionary Ridge was fought on or about the 20th Nov'r, 1863, and the Federal forces occupied this portion of the country & the portion of country where said Shirley lived in a very few days thereafter. I think on or about the 29th of the same month.

Further deponent saith not.

A. P. HUNTER.

Sworn to and subscribed before me this June 7th, 1870. Notice filed with other depositions.

C. W. VINSON, *Clerk.*

313 *Circuit & law courts, Hamilton County.*

STATE OF TENNESSEE, *Hamilton County:*

I, C. W. Vinson, clerk of the circuit court of Hamilton County, in said State, hereby certify that the foregoing deposition of A. P. Hunter, was taken before me, as stated in the caption, and was reduced to writing by the witness, and his said answers were acknowledged to be true, and sworn to by the witness in my presence. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed it up and placed it in the post office without being out of my possession, or altered after it was taken, this 7th day of June, 1870.

C. W. VINSON, *Clerk.*

(Endorsed:) Rec'd, sealed up at post office Knoxville, Tenn., June 13, 1870, then opened & filed by me. M. L. Hall, clerk.

Subpœna to testify.

STATE OF TENNESSEE:

To the sheriff of Hamilton County, greeting:

314 You are hereby commanded to summon R. L. McNabb, Alexander McNabb, Henry Renick & Louisa Renick, Elijah Fitzgerald, W'm Fitzgerald, H. C. Alexander, John Anderson, G. R. Cannon, A. P. Hunter, Robert Carson, John Weeden, & Elias Padgett, to appear before the clerk & master of the chancery court at Harrison, on the 6th day of June, 1870, for the purpose of giving evidence in a certain now depending in the United States district court at Knoxville, Tennessee, wherein Thomas Shirley is the complainant and Peter Monger is the defendant, on the part of the defendant. And this you may in no wise omit under the penalty of one hundred and twenty-five dollars,

Witness, A. P. Hunter, clerk and master of our said court, at office, the 27th day of May, 1870.

A. P. HUNTER,
Clerk and Master.

(Endorsed:) Subpœna. No. . In chancery. Thomas Shirley vs. Peter Monger.

Iss'd 27th May, 1870, & came to hand same day. Executed this summons on John Anderson, Rob't Cannon, & E. Padget, the 30th May, 1870.

JOHN MONGER,
Dep. Sh'ff.

315 Executed on all the balance of the parties named within, except G. R. Cannon, June the 4th, 1870.

J. G. REED, *D. Sh'ff.*

Notice of taking depositions.

In the U. S. district court, at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER. } Notice.

I will take the depositions of R. L. McNabb, Alexander NcNabb, Henry Penick & Louisa Penick, Elijah Fitzgerald, W'm Fitzgerald, H. C. Alexander, John Anderson, G. R. Cannon, A. P. Hunter, Robert Cannon, & John Weeden, at the court-house in Harrison, Tennessee, and also the deposition of Elias Padget, at same time & place on the 6th day of June, 1870, and continue the same from day to day until completed, to be read as evidence on the trial of the above stated cause.

May 27, 1870.

PETER MONGER.

(Endorsed :) Came to hand May 30th, 1870. Executed by serving a trew coppy of this notice on R. M. Edwards, on Monday, May 30th, 1870, & return to office.

F. E. HARDWICKE, *Const.*

316 In the circuit court of the United States, for the eastern division of Tennessee, at Knoxville, Tennessee.

THOMAS SHIRLEY
vs.
PETER MONGER.

The depositions of R. L. McNabb, Henry Penick, Louisa Penick, Elijah Fitzgerald, William Fitzgerald, H. C. Alexander, John Anderson, G. R. Cannon, A. P. Hunter, Elias Padget, Robert Cannon, and John Weeden, taken upon notice, on the 6th day of June, 1870, and from day to day upon adjournments, at the court-house in Harrison, Hamilton County, Tennessee, in presence of the above-named parties by their counsel; said depositions being taken on behalf of the defendant in the above stated cause.

Deposition of Elias Padget.

Said witness, ELIAS PADGET, aged seventy-two years, being sworn, deposed as follows:

1st int. How long have you resided in Hamilton County? Are you acquainted with the compl't, *or compl't*, Thomas Shirley; if you say yea, how long have you known him; have you known him intimately?

317 I came to Hamilton County in the year of 1846. I am acquainted with Thomas Shirley, and have been ever since I came to Hamilton County, until he left this county during the rebellion. I knew him intimately during the above-stated time.

2d int'y. How near did you reside to him during the period mentioned? From your knowledge of the character and reputation of said Shirley would you believe him on oath, when testifying in a cause in which he is interested? What was the general reputation of said Shirley among his neighbors for veracity?

Answer. It was something about one mile. From my knowledge of

said Shirley, in a cause in court where he is interested, I could not give him full faith & credit on his oath. His general reputation among his neighbors for veracity was unfavorable.

318 3d int'y. What is your occupation or *or* profession, and how long have you been engaged in your present profession or occupation?

Answer. I am a farmer. I am and have been a minister of the Gospel about twenty-four years.

4th int'y. State if, during the year 1863, you had a conversation with Shirley in reference to the occupation of the country by Federal forces? If so, state as nearly as you can, the time and place said conversation occurred, who was present, and state what Shirley said in reference to this subject.

Answer. I had a conversation with Tho's Shirley, at his own house, in Hamilton County, in or about the month of August, 1863, and he appeared very much dejected; and that the Federals would

319 certainly come here and occupy this country, and all our property would *all* be destroyed.

And further this deponent saith not.

E. PADGET.

Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of Rob't Cannon.

Said witness, ROBERT CANNON, aged sixty-five years, being sworn, deposed as follows:

1st int'y. What is your occupation or profession? How long have you resided in Hamilton County? Are you acquainted with Thomas Shirley, and how long have you known him? Did you at any time reside near him; if so, how long? Did you know Shirley intimately?

Answer. I am a farmer. I have resided in Hamilton County for more than thirty . I am acquainted with Tho's Shirley; have been acquainted with him about twenty-five years. I resided near to him most of the time. I know him very well.

320 2nd int'y. From your own knowledge of said Shirley's character, and from his general reputation in the country, would you believe him on oath when testifying in a cause in which he had any interest? What was his general reputation in the community for veracity?

Answer. In testifying in a cause in which he was interested I could not give him credit. His reputation in the neighborhood for truth and veracity was bad.

And further this deponent saith not.

ROBERT CANNON.

Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of Jno. Weeden.

Said witness, JOHN WEEDEN, aged fifty-two years, being sworn, deposed as follows:

1st in'y. Where do you reside? How long have you resided in Hamilton County? Are you acquainted with Thomas Shirley; if so, how

321 long have you known him; and did you, or do you now know him intimately?

Answer. I reside in Hamilton County, and have resided there about thirty-three years. I have known Tho's Shirley thirty years or more. I was acquainted with him that long, tho' did not visit him very often.

2d int'y. From your own knowledge of said Shirley's character and his general reputation among his neighbors, would you believe him on oath when giving testimony in a cause in which he had any interest? What is his reputation among his neighbors for truthfulness?

Answer. Where he had any interest, I could not believe him on oath. His reputation among his neighbors for truth and veracity was bad.

And further this deponent saith not.

JOHN WEEDEN.

322 Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of R. L. McNabb.

Said witness, R. L. McNABB, sixty-one years of age, being sworn, deposed as follows:

1st int'y. How long have you resided in Hamilton County? What is your present official position, if any? Are you acquainted with Tho's Shirley; if so, how long have you known him; and do you know his general reputation among his neighbors?

Ans. I have resided in Hamilton County twenty-nine years. My present official position is county surveyor for Hamilton County. I am acquainted with Tho's Shirley; have been acquainted with him for more than twenty years. I *no* his general reputation in the country.

323 2d int'y. From your own knowledge of Tho's Shirley's character and his general reputation in the community, would you believe him on oath when testifying in a cause in which he had any interest? What was Shirley's general reputation for truthfulness?

Answer. I would not believe him on oath where he was interested. His reputation for truth and veracity in the neighborhood was bad.

And further this deponent saith not.

R. L. McNABB.

Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of Alex. McNabb.

Said witness, ALEXANDER McNABB, aged 27 years, being sworn, deposed as follows:

1st int'y. Where do you reside? How long have you resided in Hamilton County? Are you acquainted with Joseph G. Richie; if so, how long have you known him?

324 Ans. I reside in Hamilton County, and have resided in said county all my life, and am 27 years of age. I am acquainted with Joseph G. Richie, and have been acquainted with him about eight years.

2nd int'y. Did you, at any time, hear Jos. G. Richie make any statements in regard to the testimony he would give in this cause? If so, state when & where it was, who was present, and state fully and par-

ticularly all said Richie stated in reference to the testimony he would give in the cause, and the inducement offered to him to give his testimony.

Answer. I heard Joseph G. Richie make statements in regard to the testimony he would give in this cause. It was in June, 1868, (no person present.) It was about one mile from Ooltowah where he made the statements. He said he was going down to his mother-in-law's, Mrs. Rayls, and that Judge Trewhitt, Peter Monger, D. N. McGill, and R. G. Campbell, was to meet him there; and he said, there is a big suit,
325 and if they would do right he would have nothing to say in it; but if they did not, there was a whole heap of money in it; about fifteen hundred dollars in it.

3d int'y. From whom did you understand he was to receive the fifteen hundred dollars?

Answer. From the impression made on my mind in said conversation I am of the opinion he was to receive the money from Tho's Shirley or his friends.

4th int'y. Are you acquainted with Tho's Shirley; if so, how long have you known him? Do you know his general reputation in the community?

Ans. I am acquainted with Tho's Shirley. I have known him fifteen years or more. I know his general reputation in the community.
326 5th int'y. From your own knowledge of said Shirley's character and his general reputation, would you believe him on oath when testifying in a cause in which he had any interest? What is his general reputation for veracity?

Ans. No, sir; his general reputation in the neighborhood for truthfulness was bad.

And further deponent saith not.

ALEXANDER McNABB.

Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of H. C. Alexander.

Said witness, H. C. ALEXANDER, aged fifty-three years, being sworn, deposed as follows:

1st int'y. How long have you resided in Hamilton County. Are you acquainted with Thomas Shirley, and how long have you known him? Do you know his general reputation in the community? How long
327 did Shirley reside in Hamilton County?

Ans. I have been living in said county over thirty years. I am acquainted with Thomas Shirley—have known him ever since I have been in the county up to the war; I know his reputation. Shirley has resided in this county most of the time from 1836 to some time in 1863.

2d int'y. What is said Shirley's reputation in the neighborhood where he resided in this county generally, especially as to truthfulness? From your own knowledge of his character and his general reputation in the community, would you believe him on oath when testifying in a cause in which he had any interest? How far did you reside from Shirley?

Ans. His general reputation was bad in the neighborhood, and also his reputation for truthfulness was bad. From his general reputa-
328 tion and character, where he was interested, I could not believe

him on oath. I resided about three miles from said Shirley.

Further this deponent saith not.

H. C. ALEXANDER.

Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of C. W. Vinson.

Said witness, C. W. VINSON, aged years, being sworn, deposed as follows:

1st int'y. What is your present official position, and how long have you occupied or held your present office? State if the records of the circuit court of Hamilton County, made previous to the recent war, are lost or destroyed. Is there any record or papers in your office of the case of The State of Tennessee vs. Thomas Shirley?

Ans. I am clerk of the circuit court of Hamilton County—have been since March, 1864. The entire records of the circuit court, pre-
329 vious to 1864, were lost or destroyed during the late war. No such case as The State of Tennessee against Thomas Shirley remains on file in said office.

C. W. VINSON.

Sworn to and subscribed before me this 6th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of Jno. Anderson.

Said witness, JOHN ANDERSON, aged fifty-five years, being sworn, deposed as follows:

1st int'y. How long have you resided in Hamilton County? Are you acquainted with Tho's Shirley; if so, how long have you known him, and how long did he reside in Hamilton County? What is his general character for truthfulness?

Answer. Near thirty-five years. I am, or was during his residence in this county. He resided in Hamilton County from about the year 1832 or 1833 to the year 1863, as well as I remember. It was not good.
330 2d int'y. From your own knowledge of his character and his general reputation, would you believe him on oath when testifying in a cause in which he was interested? Did you, at any time, occupy any official position in this county since the war?

Answer. I would not. I was a member of the legislature for about three years.

3d int'y. State if you know of any criminal charge being preferred against said Shirley in the circuit court of Hamilton County. If so, state what the charge was, how it was brought, when it was, and state particularly all you know of the cause, and how you derived your information.

Answer. I was acting as deputy sheriff of Hamilton County in year 1842–3. At the March term of the circuit court of Hamilton
331 County, Tenn., Thomas Shirley was arraigned at court on a charge of perjury—the bill had previously been found by the grand jury of Hamilton County, Tenn., and as such deputy sheriff had charge of the jury that was empanelled to try said Thomas Shirley on the charge of perjury. He was charged in the bill of swearing on his corporal oath, and the proof showed that he was sworn with an uplifted hand. The

jury agreed that he was guilty of the charge of perjury, but acquitted him on the ground that the indictment and proof did not correspond. As above stated, I was present with the jury during the progress of the whole trial is the way I derived my knowledge of the facts.

Further deponent saith not.

JOHN ANDERSON.

Sworn to and subscribed before me June 6th, 1870.

The further taking of depositions was adjourned over until to-morrow, the 7th June, 1870.

The further taking of said depositions *are* resumed on this 7th June, 1870.

332 A. P. HUNTER, *C. & M.*

Deposition of Elijah Fitzgerald.

Said witness, ELIJAH FITZGERALD, aged 53 years, being sworn, deposed as follows:

1st int'y. What is your age and residence? How long have you resided in Hamilton County? Do you now, or have you at any time, occupied any official position in this county; if so, what office and at what time? How long have you known Thomas Shirley, and how long did said Shirley reside in Hamilton County? Are you acquainted with his general character and reputation in the community where he resided in this county?

Answer. My age, about 53 years; residence in Hamilton County, Tennessee; I have resided in said county about 12 years. I was deputy sheriff of said county for two years; say for two years
333 just immediately after the war. I have known Tho's Shirley for fifteen years or more. Said Shirley lived in this county up to the time he left here—up to about the close of the war. I think I am acquainted with his general character and reputation in the community where he resided in this county.

2d int'ry. What was, and is the character and reputation of said Shirley for veracity? From your own knowledge of his character and general reputation, would you believe his testimony when giving evidence under oath in a cause in which he had any interest?

Answer. The character of said Shirley for *reputation* and veracity in the community in which he lived is not good. From my own knowledge of his character and general reputation, I could not believe his testimony when giving evidence under oath in a cause in which he had any interest.

ELIJAH FITZGERALD.

Sworn to and subscribed before me this 7th day of June, 1870.

A. P. HUNTER, *C. & M.*

334 *Deposition of Henry Penick.*

HENRY PENICK, of lawful age, being sworn, deposed as follows:

1st. What is your age? Where did you reside, and upon whose farm did you reside during the latter part of the year 1863, and in what county was it?

Answer. I am about 70 years of age; I resided in Hamilton County.

upon the farm of Tho's Shirley in the latter part of the year 1863, and I had lived there about 14 or 15 years.

2d int'y. Did any member of Tho's Shirley's family reside or remain at your house or home during the latter part of the year 1863? If so, state what member of his family; when they came to your house, how long they remained, the time they left or removed from your house, and to what place they removed.

335 Answer. The Sunday after the battle of Mission Ridge Mrs. Shirley and her daughter, Adaline, came to my house, and they staid there the most of the time of nights, for about 8 or 9 weeks. I think they left my house some time the next January. My information is that they moved to the State of Georgia.

Further deponent saith not.

HENRY PENICK.

Sworn to and subscribed before me this 7th June, 1870.

A. P. HUNTER, *C. & M.*

Deposition of Louisa Penick.

Said witness, LOUISA PENICK, of lawful age, being sworn, deposed as follows:

1st. int'y. What is your name? Are you the wife of Henry Penick? Are you acquainted with Thomas Shirley and his family? Did any member or members of said Shirley's family come to your home in the latter part of the year 1863? If so, state what members of his family came to your home, at what time they came, and how long they remained,

336 and where they removed to when they left your house.

Answer. I am about 46 years of age; I am the wife of Henry Penick; am acquainted with Tho's Shirley & his family. His wife & daughter came to my house, I think it was after the battle of Missionary Ridge. I do not remember the exact time they staid at my house, but it was some several weeks. My information is that they went to Georgia.

And further deponent saith not.

her
LOUISA + PENICK.
mark.

Sworn to and subscribed before me this 7th June, 1870.

A. P. HUNTER, *C. & M.*

STATE OF TENNESSEE, *Hamilton County:*

I, A. P. Hunter, clerk & master of the chancery court at Harrison, in said county and State, hereby certify that the foregoing depositions were taken before me, as stated in the caption, except the deposition of C. W. Vinson, which was taken by consent of the parties, by their

337 attorneys; that said depositions were reduced to writing by me, or by the witnesses in my presence. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and placed them in the post office at Harrison, without being out of my possession, or altered after they were taken, and that all adjournments are noted in the papers.

Witness my hand at office in Harrison, in said county and State, this 7th day of June, 1870.

A. P. HUNTER,
Clerk & M. Chancery Court at Harrison, Tennessee.

Complainant, by attorney, excepts to the reading of the foregoing depositions of Henry Penick & wife, Louisa Penick, for the following reasons, to wit: No opportunity has been given to cross-examine said witnesses; the depositions were taken this day while the attorney for complainant was engaged in business, professionally, in the circuit court, now in session; and that on appearing before the clerk & master
338 at his office at the place of taking said depositions at 1 o'clock p. m. of this day, the said depositions were closed, and the said witnesses gone home. For the above reason compl't's sol. excepts. This June 7th, 1870.

R. M. EDWARDS, *Sol.*

Bill of cost.

C. & M. Hunter, taking 11 depositions ea. $1,00						$ 11 00
" " issuing sub. for witnesses						1 10
D. S. John Monger, summoning three witnesses						75
" J. G. Reed	"		"			2 00
Witness E. Padget	1	day's	attendance			1 00
" Robert Cannon	"	"	"			1 00
" John Weeden	"	"	"			1 00
" R. L. McNabb	"	"	"			1 00
" R. L. McNabb	"	"	"			1 00
" C. W. Vinson	"	"	"			1 00
" John Anderson	"	"	"			1 00
" Elijah Fitzgerald	"	"	"			1 00
" Henry Penick	"	"	"			1 00
', Louisa Penick	"	"	"			1 00
Postage, C. & M.						15
						$25 00

339 (Endorsed:) Rec'd, sealed up, from the post office at Knoxville, Tenn., June 13, 1870, which was then opened and filed by me.

Bill of costs.

Clerk, M. L. Hall	$ 10 50
" H. M. Aiken	151 00
D. M. J. H. Pickle	14 50
D. S. John Monger	75
" " W. Rogers	1 00
" " J. G. Reed	2 00
" " T. R. Elliott	1 00
" " W. H. Bean	75
Const. J. J. Allen	25
" Richard Thomas	25
C & M. A. P. Hunter	20 87
" " J. R. Pace	1 00
" " A. J. White	2 00
Clerk, A. L. Spears	1 00
" Tho's E Leutz	1 00
" C. W. Vinson	1 00
J. P., J. M. S. Greene	3 00
" " E. M. Eppinger	1 00

"	" S. J. Ward	1 00
"	" J P. Tally	1 00
Com'r,	D. J. Duffy	14 25
		$229 12
340	Bro't forward	$229 12
Wit.	A. P. Hunter	1 50
"	R. M. Williamson	1 50
"	James Daniel	1 50
"	C. D. Luttrell	3 00
"	George Montgomery	1 50
"	Thomas Shirley	1 50
"	Adaline R. Cumbrie	1 50
"	Ja's B. Shirley	1 50
"	A. B. Conner	1 50
"	Joseph G. Richey	1 50
"	Jno. W. Watkins	1 50
"	D. N. McGill	1 50
"	Nelson Little	1 50
"	David Westmoreland	1 50
"	E. Padget	1 50
"	Rob't Cannon	1 50
"	John Weeden	1 50
"	R. L. McNabb	1 50
"	Alex. McNabb	1 50
"	H. C. Alexander	1 50
"	C. W. Vinson	3 00
"	Jno. Anderson	1 50
"	Elijah Fitzgerald	1 50
"	Henry Penick	1 50
"	Louisa Penick	1 50
"	D. C. Trewhitt	1 50
		$271 12
341	Brot' forward	$271 12
Wit.	R. G. Campbell	1 50
"	D. N. Bell	1 50
"	R. H. Guthrie	1 50
"	S. A. McKenzie	1 50
"	H. D. Stone	1 50
"	A. S. Jones	1 50
Atto.	Baxter	20 00
	Total	$300 12

EASTERN DISTRICT OF TENNESSEE, *ss:*

I, H. M. Aiken, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing transcript contains a full, true, and perfect copy of the record and proceedings of said court in the cause of Thomas Shirley, complainant, and Peter Monger, respondent, as the same appears from the records of said court and the papers on file in said court in said cause.

Given under my hand and the seal of said court at office in Knoxville. this 15th day of August, 1871.

[SEAL.] H. M. AIKEN, *Clerk.*

(Indorsement on cover:) No. 355. Peter Monger, appellant, vs. Thomas Shirley. E. Tennessee C. C. U. S. Filed 20th October, 1871.

PETER MONGER, APPELLANT,
vs.
THOMAS SHIRLEY.

No. 355.

The Appellee, Thomas Shirley, comes by John Baxter, his Solicitor, and moves to strike this case from the docket, and in support of his motion shows:

That this suit was instituted on the equity side of the docket in the Circuit Court of the United States for the Eastern District of Tennessee, on the 28th January, 1871, (see printed record, pages 36–37.) A decree was entered declaring the rights of the parties and ordering an account.

The motion to strike from the docket is based on the following grounds:

1st. An appeal bond, reciting that the Appellant had prayed an appeal, seems to have found its way into the file and has been copied into the record. But no appeal was asked for or granted; there was no acceptance of the appeal bond by the Court; nor is there any citation or writ of error in the case.

2nd. The decree is merely declaratory of the rights of the parties; it does not order a transfer of the possession of the property in controversy, or direct the payment of money; is not final, and no appeal will lie from it. *Philip's Practice*, chapter 7, from page 66 to 72, inclusive, and authorities there cited.

JNO. BAXTER,
Solicitor for
THOMAS SHIRLEY.

IN THE SUPREME COURT OF THE UNITED STATES.

December Term, 1871.

PETER MOUNGER, Appellant,
vs.
THOMAS STANLY.

No. 355.
Motion to Dismiss.

BRIEF FOR APPELLANT.

The motion in this case is based upon the ground, 1st, That the decree in the Circuit Court is not final, and 2d, That no appeal was prayed or granted.

A decree is final when all the facts and circumstances material and necessary to a complete explanation of the matters in litigation are brought before the court and so fully and clearly ascertained on both sides, that the court is enabled, upon a full consideration of the case made out, finally to determine between them according to equity and good conscience.—*Kane vs. Whittick*, 8 Wendell, 224; *Delap vs. Hunter*, 1 Sneed, 104.

In Whiting vs. the Bank of the United States it was held, that a decree of foreclosure and sale is in the sense of the present inquiry a final decree.—13 Peters, 15.

An instance of a final decree in the same sense is found in *Michoud vs. Girod*, 4 Howard, 534; and in the order made by this court in the same case.—Ib. 562.

In *Forgay vs. Conrad*, 6 Howard, 201, the decree appears to be on all four with the decree in this case. It declared sundry deeds to be fraudulent and void; directed the property to be delivered to the complainant; and ordered the master to take an account of the profits of the same. This court held, that though the decree was not

technically final, it was so within the meaning of the acts of Congress regulating appeals to this court.

This decision was sustained in *Thompson vs. Dean*, 7 Wallace, 342. *Railroad Company vs. Bradley*, Ib. 575.

In this case the property had been already taken from the Appellant and placed in the hands of a receiver, Rec. p. 35, and by the decree his title was declared null and he perpetually enjoined from asserting it. He was adjudged liable for rents and profits, and the master ordered to report the same.

Under the act of 1803, the appeal is a matter of right, to be allowed upon the prayer of the party complaining of the decree, and its allowance may be inferred from the state of the record. *Railroad Company vs. Bradley*, 7 Wallace, 575. *Hudgins vs. Knap*, 18 Howard, 530. The case of the United States vs. Adams, 6 Wallace, 101, relates to appeals from the Court of Claims under the act of March, 3, 1863; but it is believed that the principles announced in the opinion are of general application.

The clerk certifies, (Record p 36,) that at the January Term, 1871, the following proceeding was had, viz: a "final decree" on the 30th of January, and on the 10th of February an "appeal bond" was filed, reciting among other things, that an appeal had that day been "prayed." Thereupon all action in the case is suspended. The July term of the court comes and nothing is done, and on the 15th of August following he certifies this "full, true and perfect," copy of the proceedings, (Record p. 108.) Does there remain reason for doubt that the appeal was "allowed."

HORACE MAYNARD,
For Appellant.